1950. File No. S.Bel 1/50

Legal DEPARTMENT
A BRANCH

Subject:— Suits Belgaum

Civil Suit No. 103 of 1948

Vinayakrao Shripadrao Patwardhan - Plff.

Vs

The Province of Bombay and others } Deff

P 95 E-H

S. Belgaum 1 | 1950

File No.

S. Bel 1/50

C O N T E N T S.

Legal Department File No. S. Bel. 1/50.

Sr.No.	R.I./O.No.	Subject	Pages.

Suits Belgaum.

C.S.No. 103 of 1948.

V. S. Patwardhan

v/s

The Province of Bombay and others.

For a declaration that the orders are illegal and ultra vires, that defts' Nos. 2 & 6 are not the tenants of the plff. and for possession of the suit-lands with past and future mesne profits.

1-140

G.C.P.—(J) J 202—500—8-47
G.R., J.D., No. 4398 dated 8-7-16

A.O. 160 of 1949.

Copy

[Spl.—H.C. A.S. Civil 20 e.

IN HIS MAJESTY'S HIGH COURT OF JUDICATURE, APPELLATE SIDE, BOMBAY

APPEAL No. 16 OF 1949 FROM Order ~~DECREE~~

1. Siddappa Balappa Ghaniger & Ainapur & ors. } Appellant

versus

2) Province of Bombay. } Respondent

Claim—Rupees 1, 70, 000/-

No. 1873 OF 1949

From

THE DEPUTY REGISTRAR,
High Court, Appellate Side, Bombay;

To

The Secretary,
Legal Dept: Secretariat, Govt. of B'bay.

Bombay, 9th March 1949.

Sir,

The Appellant abovenamed having presented an appeal from the decision of the Senior Div. Civil Judge of Belgaum in Sh. Suit No. 103 of 1948, and the same having been registered in this Court, and this Court having on 11th February 1949, ordered notice to issue, I have the honour to inform you that the hearing of the said appeal will take place on the 16 day of March 1949, or on any subsequent day which to this Court may seem convenient; and that if no appearance is made on your behalf either in person or by a pleader of this Court or agent duly authorized and instructed, it will be heard and determined in your absence.

To be Served on the Govt. Pleader

I have the honour to be,
Sir,
Your most obedient servant,

Sd/- R. Mahale
for Deputy Registrar.

3-17 C

IN HIS MAJESTY'S HIGH COURT OF JUDICATURE AT BOMBAY.

In Appeal from Order No.18 of 1949.

1.Shidhappa Balappa Ghaniger of Aimapur,Taluka Athani.
2. Chanamalla Lakkappa Ghaniger of Aimapur,Taluka Athani } Appellants. Original Defendants 2,4,5,6.
3. Jakkappa Shidhappa Karchi -do- -do-
4. Mallappa Shidhappa Karchi. -do- -do-

Versus.

1. Vinayakrao Shripatrao Patwardhan of Miraj.
2. The Province of Bombay.
3. Hanmant Kushanappa Khot of Aimapur,Taluka Athani. } Respondents. Opponents Plaintiffs (o & Def&.Nos.1 and 5.).
4. C.D.Gumaste, Receiver ,Pleader Practising at Belgaum.

Claim Rs.1,70,000/- for jurisdiction.

The Appellants abovenamed being aggrieved by the order dated 29th January 1949 of the Court of the Civil Judge, Senior Division, Belgaum appointed a Receiver in Special Jurisdiction Suit No.108 of 1948 beg to appeal against the same to this Honourable High Court on the f following amongst other grounds:-

1. That the Order of the Learned Civil Judge is contrary to law, justice, equity and the weight of evidence.
2. That the learned Judge had no jurisdiction to make the order for an appointment of Receiver.
3. That the order of the Learned Judge is illegal and invalid and not binding on the Appellants and the Government of Bombay.
4. That the suit as well as the application for appointment of a Receiver are not maintainable.
5. That the plaintiff had no cause of action either for the suit or for his application for appointment of a Receiver.
6. That the Learned Judge's order for appointment of a Receiver without notice to the Government of Bombay is illegal and unenforceable-
7. That the learned Judge has misread the pleadings and the evidence of record.
8. That the learned Judge ought to have held that the order of

of the Government of Bombay dated 23-3-1948 was perfectly legal and valid and was binding on the Plaintiff.

That the Learned Judge erred in holding that the applicants were not entitled to invoke the aid of Section 88 of the Bombay Tenancy Act.

10. That the Learned Judge erred in construction of and in relying on section 89(2) of the Bombay Act No.57 of 1948.

11. That the Learned Judge erred in proceeding to appoint a Receiver without first deciding the question of Jurisdi-ction of the Court.

12. That the Learned Judge erred in holding that the Appellants are not bona fide possessors of the lands and are trespasser and therefore not likely to protect the lands from inundati

13- That the learned Judge ought to have seen that no case for appointment of a Receiver has been made out by the Plaintiff

14. That the Learned Judge ought to have seen that he could not supercede the orders of the Collector of Belgaum dated 17-1 1947 and of the Government of Bombay dated 23-3-1948 by appointing a Receiver.

15. That the learned Judge ought to have seen that no waste and or destruction of suit property as required by law to justify the appointment of a Receiver were alleged and proved by the plaintiff.

16. That the learned Judge erred in holding that defendants Nos. 2 ,4,and 5 admitted to have surrendered their possession.

17. That the learned Judge erred in holding that the Government of the Province of Bombay did not follow the procedure under the Bombay Tenancy Act and or/the Bombay Land Revenue Court in making their order dated 23-3-1948.

18. That the learned Judge has omitted to contrue abd consider the various documents produced by the parties to the suit.

19- That the learned Judge has omitted to consider the material evidence on record .

20. That the learned Judge has misappreciated the evidence record.

21- That proper inferences are not drawn and probabilities not

1 21

21. That proper inferences are not drawn and probabilities not weighed.

22. That the learned Judge has erred in relying on the entries in the record of rights based on the alleged receipts from Chandrappa-

23. That the learned Judge ought to have seen that the Plaintiff and Chandrappa and the Defendant No3. colluded to defeat the Tenancy Rights of the Applicants.

24. That the Learned Judge ought to have held that the Appellants were not the sub-tenants of Chandrappa but were the protected tenants of the Plaintiff.

25. That the learned Judge ought to have seen that no Receiver could be appointed over the suit property as the Plaintiff has been served with a temporary injunction restraining him from obstructing possession of defendant Nos. 2,4,5,and 6 in their enjoyment of the suit propert as in Civil Suit No 6 of 1948 of the Court of Civil Judge Junior Division at Athani.

26. That the order of appointment of Receiver is not just and proper.

27. It should have been held that the Appellants were in continuous and actual and legal possession fo the suit property from the year 1948

28. That so long the entry in the Record of Rights showing the Applicants as protected tenants the Civil Court cannot give any relief to the plaintiff/Landlord by way of appointment of Receiver or of that nature effecting possession.

Dated at Bombay this 8th)
day of February 1949).

Sd/- M.F.M.Reddy,
Advocate for Appellants.

In the Court of Civil Judge Sr, Dn. at Belgaum. 9 25

1) Vinayakrao Shripadrao Patwardhan Brahmin, Agriculturist, aged 45 years Inhabitant of Miraj. — Plaintiff

- Against.

1. The Province of Bombay.(The summons to be served on the Collector of Belgaum.")
2. Shiddappa Balappa Chamiger, Lingayat, Agriculturist,aged 30 years, inhabitant of Ainapur Taluka Athni.
3. Hanamant Kushappa Khot., Maratha Agriculturis aged 30 years inhabitant of do.
4. Chanamalla Lakkappa Chamiger, Lingayat --- Agriculturist aged 60 years, inhabita at of do
5. Jakkappa Shiddappa Karachi, Lingayat Agriculturist aged 60 years inhabitant of do.
6. Mallappa Shiddappa Karchi aged 55 years rest Do.

Defendants.

Claim Rs.10,952-0-6+ 200 For Court fee.
Rs.1,70,000-0-0 For jurisdiction.

The Plaintiff above named begs to submit as under :-

1. The subject matter of the suit consists of lands bearing t-

S.NO.	Measuring Acres.	Assessed at Rupees.	Price Rupees.
453	10-23	24-14-0	340-0-0
459	20-33	51-15.0	640-0-0
460	18-20	44-6-0	550-0-0-
813	1-20	3-14-0	50-0-0
814	0-30	1-14-0	20-0-0

situated at Ainapur in Taluka Athni in the District of Belgaum.

4. The lands described above, belong to the plaintiff. for the year 1946-47, plaintiff leased the said lands by auction to Chandrappa Yesu Dhanavade of Ganeshwadi, who offered the highest bid, being Rs. 8900/-. This amount was paid by Chandrappa in cash inadvance and took the lands on lease for one year, i.e. 1946-47. Chandrappa yesu Dhanavade did not personally cultiv-

the suit lands but he subl- leased Survey No. 453 to deft. No. 6, Survey No. 459 to defts. Nos. 4, and 5, Survey No460, 813, and 814 to defts. Nos. 2 and 3. Deft. No. 6 took Survey No. 453 as a sub- leaseof Chandrappa by paying Rs-2000/-to him in cash as rent in advance. Defendants Nos. 4and 5 paid Rs.4000/-to Chandrappa and took on sub-lease Survey No 459. Defendant Nos 2 and 3 took the remaining three lands on sublease for a cash rent of Rs. 4000/- paid in advance to Chandrappa. Thus, Chandrappa Dhanavde by subletting the suit lands to defendants made a profit of Rs. 1100/-

5. After the lease for R-1946-47 was over , and since Chandrappa had sub let the lands, Chandrappa's tenancy terminated under section 5 of the Bombay tenancy act, of 1939 as modified up tp January 1947. Plaintiff was entitled to recover the possession of these lands; so, he applied to the Mamlatdar at Athni in Tenancy application No. 159 of 1947, for restoration of possession of the lands described above.To this application Chandrappa and defendants No 2 to 6 were parties. The said application was heard by the Tenancy Head Karkun at Athni. In the course of the proceedings of the said application, Chandru and Defendands 2 to 6 appeared before the Tenancy Head Karkun and gave their say. Defendants 2 to 5 were stated on oath that they delivered possession of the respective lands to plaintiff about the Padwa of 1947;that they were not in possession of the lands and they have not out the grass as alleged by the plaintiff. But Defendant No. 6 stated that he was a tenant of the plaintiff , he had taken survey No 453 on lease on a cash rent of Rs. 1500/-, that Chandru and defendants Nos. 2 to 6 had all gone together to plaintiff to take all the lands on lease, and that the lease was taken in the name of Chandru out of confidence, that he was in possession of Survey No.453 and was not liable to be avicted.The tenancy head Karkun, on a perusal and documentary evidence came to the conclusion that the plaintiff was entitttled to the restoration of the lands. Thus, he decided the application on 22-9-47, and ordered that since defts. Nos. 2 to 5 admitted on oath that the respective lands in their possession have already been given into the plaintiff's possession, so it was not necessary to order

passed by the provincial Government Defendant Nos. 2 to 6 took the law in their hands and tried to usurp forcibly the possession of the lands described above. Plaintiff had to resist the action of Defendant Nos. 2 to 6. Ultimately the matter became serious and resulted in in proceedings under section 145 of the Criminal Procedure Code, which is still pending.

7. The order passed by the defendant No. 1 on 23-2-48 is illegal and ultra-vires. The Bombay Tenancy act of 1939 as modified up to January 1947, prohibits the sub lease of the lands on the part of a tenant either protected or unprotected. Under the said act, sub-letting on the part of a tenant or protected tenant results in the terminations of the tenancy; thus giving a right to the land lord to recover possession of his lands from the tenant whose tenancy is terminated as a result of sub-letting the lands; So the subletting of the lands is opposed to the provisions of the Bombay Tenancy Act. A sub-tenant claims through a tenant if the tenancy itself terminated as a result of sub-letting the sub-tenancy also comes to an end, because , a sub-tenant has no higher right than the tenant through whom he claims. Since sub-letting is opposed to the principles of the Bombay Tenancy Act, a person who comes in possession of the lands by virtuem of a sub-lease, as a person who comes in possession unlawfully. So a sub-tenant is not a person who could be deemed to be lawfully in possession of the lands. Defendant Nos. 2 to 6 being sub-tenants, they are not persons who could be deemed to be lawfully in possession. If a tenant becomes a tresspasser, after the termination of his tenancy, the sub-tenants who come through him, cannot be deemed to be persons holding the lands fr right fully. After 1946-47, Chandrus possession of the lands become wrongfulk. The Defendants Nos. 2 to 6 who were claiming through Chndru, were not better than tresspassers. Defendants Nos. 2 to 6 had no right to seek protection under the Bombay Tenancy act. In case of Defendants Nos. 2 to 5 their case is quite differant. They have stated on oath that they had delivered possession of the respective lands in their possession to the plaintiff

restiration of possession of those lands which were in the possession of the defendants Nos 2 to 6 and so fear and survey No. 453 was concerned the tenancy head karkun restored its possession to the plaintiff. After the decision of the said Application the plaintiff took possession of all the lands and performed summer operations therein for the year 1947-48.

6. Defendants 2 to 6 did not prefer any x appeal against the order of the Tenancy Head Karkun dated 22-9-1947 in Tenancy Application No. 159 of 1947, nor did they make any application either to the commissioner,S.D. or to the Provincial Government From this it is evident that the Defendant Nos 2 to 6 did not feel themselves aggrived by the said order. But ~~Rao~~ Mr. N.B.& Dalavai one of the members of the Legislative Assembly for x reasons best known to him sent a letter to the Provincial Government on 22-10-1947 and another letter in the month of January 1948. By his letter dated 22-10-1947, it seems that Mr. N.D.Dalawai, questioned the correctness of the order passed by the Tenancy Head Karkun in the Tenancy Application No. 159/47. The provincial Govt. Afterr receipt of the letter of Mr. N.D.& Dalavai dated 29.10.47 acted upon its strength and sent anorder To the Collector dated 17th November 1947, directing to see that the possession of the lands is not transferred as far as possible to the plaintiff untill the matter was finally dicided by the provincial Government.This interiams order was passed by the Government Soley on the letter of Mr. N.B.Dalavai dated 22.10-47 of which no notice was given tothe plaintiff.The matter was altimately dicided by the provincialGovernment on 23-3-48 as would be seen from No. 7060/457 Rehvinue department.The provincial Govt. proceeded to dicides the matter without notice to the plaintiff, nor giving him a hearing. The plaintiff was informed that the Provincial Govt. was pleased to set aside the order of the Tenancy Head Karkun in. D.T.A.S.R.123 and 159. Thereupon the plaintiff applied to the provincial Government to inform the grounds on which the Provincial Government arrived at such a decision.The provincial Government that is Defendant No. 1 refused to, supply the grounds or the reasons ~~of~~ to the plaintiff on which the Provincial Government had come to the conclusions against the Plaintiff. Armed with the orders ---

13 229

about the Pdawa of 1947.The result of the order passed by the defendant no. 1 on 23-3-48 is to restore possessio n of the lands to persons who were not entittled to it. Defendants Nos. 2 to 5 having voluntarily surrendered possession of the lands to the Plaintiff, the effect of the order of the Provincial Government dated 23-3-48 is to force possession of the lands ~~xxxxxxxxxxxxxx~~ plaintiff on them. In case of Defendant No.6 he being a sub-tenant , he was not entittled to the restoration of the lands.The provincial Government may take shelter under Section 28, of the Bombay Tenancy Act. By Section 28, the Provincial Government has a right of control and superintendence over -- Collectors and Mamlatdars in the matters of administration of the provisions of the BombayTenancy act. Even thought xhx the Provincial Government possesses general powers of control and superintendence, the powers are to be used according to the provisions laid down in the Bombay Tenancy Act.Defendant No.1 has no right to pass orders inconsistant with the provisions of the said Act.The order passed by the Defendant No. 1 on -- 23-3-1948 is opposed to the provisions of the Bombay Tenancy Act, It is illegal and ultra -vires. In passing the said order, the provincial Government has arrogated to irself a power not warranted by the Act itself. Defendant No. 1 has passed this order without notice to the Plaintiff. The result of the order is that the Plaintiff had to soose possession of the lands described above. The order being illegal and ultra vires, does not confirm any rights on defendants Nos 2 to 6 which they could enforce ~~xx~~ against the plaintiff. The order passed by ~~xxxx~~ defendant No. 1 has not the effect of confirming wrongful p- possession into a rightful one. Armed with this order, Defts No. 2 to 6 have wrongfully taken the possession of the suit lands and are holding them as trespassers. Since Deft, No.1 is responsible for the loss of the possession of the suit lands on the part of the Plaintiff, Plaintiff has to file this suit for a declaration that the order passed by Defendant No. 1 as could be seen from No. 7060/457, Revenue Department , dated 23-3-48 is illegal and ultra vires; and for declaration that defendants Nos 2 tp 6 are not the tenants o f the plaintiffx and for possession of the suit lands from the defendants as

as owner and for costs, past mesne profirs for the year 1947-48 and future mesne profits.

The cause of action for the suit for declaration and p possession apose in the month of March 1948, and forpast mesne profit for the yeat 1947-48 on 31-3-48.

This suit is within the special jurisdiction of this court.

The suit being one for declaration and possession and for the redovery of past mesne profits, a fixed Court -fee of Rs.18-12-0is paid on the reldef by way of declaration, and Rs.7757-8-0 is paid on the relief for possession of the suit lands 7½ times of the assessment of the lands insuit that is, Rs. 952-0-6 on the claim of past mesne profits which is Rs.'10,000/-So the claim for court fee consists of Rs. 10,952-0-6 + Rs.200/- and that for jurisdiction is Rs.1,70,0

Notice of suit as required by law, has been given to Deft. No.1.

Plaintiff prays , that a decree may kindly be passed :-

(a) Declaring that the order passed by Deft. No.1 on 23-3-48 bearing No. 7060/45 is illegal and ultra-vires.

(b) Declaring that the defendants Nos. 2 to 6 are not t he ~~xxxxxx~~s tenants of plaintiff.

(c) Awarding possession suit Survey Nos.453 as owner to plaintiff from deft. No.6

(d) Awarding possession suit S.No. 459 as owner to plain tiff from defendants Nos. 4 and 5;

(e) Awarding possession of suit S.Nos. 460,813 and 814 as owner to plaintiff from deft No. 2 and 3.

(f) Awarding Rs.10,000/-as past mesne profits for the year 1947-48 to plaintiff from defendants Nos. 1 to 6.

(g) Awarding future mesne profits from defendants 2 to6 to plaintiff.

(h) Awarding the costs of the suit to palintiff from defendants Nos. 1 to 6.

(i) Awarding such other relief to plaintiff as he is found entitled to,

Belgaum. 8th Nov.48

1st T.C. No. 103
(A)

To
The Head Master
Government High School
Kothapalli

Sir,

I request you to grant me a Transfer Certificate.

My son's name is ... He is studying in ... class.

His date of birth according to the Register is ...

(in words ...)

He has studied in your school for ... years.

He is now in the ... class. He is ... years old.

He is a ... boy. His conduct is ...

He has been ... in his studies.

He has been ... in games.

He has been ... in other activities.

He has been ... in his behaviour.

He has been ... in his attendance.

He has been ... in his punctuality.

He has been ... in his discipline.

He has been ... in his manners.

He has been ... in his dress.

He has been ... in his cleanliness.

He has been ... in his health.

He has been ... in his character.

He has been ... in his general conduct.

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ಸದರಿ ಅರ್ಜಿಯನ್ನು ಮಾನ್ಯ B.V.ಕಡಿ ಸಾಹೇಬರ
ಮುಂದೆ ಮಂಡಿಸಲಾಗಿದೆ. ಅವರು ಆದೇಶ ಮಾಡಿದ
ಪ್ರಕಾರ. 6-2-69 ನೇದ್ದರ

True copy

Sd/- G.P Kulkarni
Pleader

order

Notice to Govt. Pleader to produce the documents mentioned in the application. No costs of the application

6-2-69 Sd/- B.V. Khadi

G.C.P.—(J) J 202—500—8-47
G.R., J.D., No. 4398 dated 3-7-16

A.O. 16of 1949.

[Spl.—H.C. A.S. Civil] 20

17 31

separate index

R. 1,314

IN HIS MAJESTY'S HIGH COURT OF JUDICATURE, APPELLATE SIDE, BOMBAY

APPEAL No. 16 OF 194 9 FROM Order ~~DECREE~~

1. Sidhappa Balappa Ghaniger of Ainapur. } Appellant
and others.
versus
Province of Bombay. } Respondent
Claim—Rupees 1,70,000/-

No. 1873 OF 194 9

From

THE DEPUTY REGISTRAR,
High Court, Appellate Side, Bombay;

To

The ~~xx~~ Secretary,
Legal Department, Secretariat, Govt. Of Bombay.
Bombay, 9th March 194 9.

Sir,

The Appellant abovenamed having presented an appeal from the decision of the Senior Div. Civil Judge of Belgaum in Spl. Suit No. 103 of 194 8, and the same having been registered in this Court, and this Court having on 11th February 194 9, ordered notice to issue, I have the honour to inform you that the hearing of the said appeal will take place on the 16th day of March 1949, or on any subsequent day which to this Court may seem convenient; and that if no appearance is made on your behalf either in person or by a pleader of this Court or agent duly authorized and instructed, it will be heard and determined in your absence.

I have the honour to be,
Sir,
Your most obedient servant,

To be served on the Govt. Pleader.

No 1873 dt 9/3/49

Rec'd copy
Govt Pleader
10-3-49

For Deputy Registrar.

Below No. LAW 741 dt. 19/3/49, from the Collector.

No. LAW 741-~~his~~ (O.S.103/1948
Belgaum 23rd March 1949

Returned with compliments to the Collector of Belgaum:-

2. In this suit no written statement has been filed on ~~his~~ behalf of Government nor any instructions or documents sent to me for the purpose. Since no sanction for the defence of the suit has been accorded. It is not therefore, possible to state the grounds to be urged as referred to in para 3 of the letter of the Government Pleader, High Court. All the necessary papers and instructions may, therefore, be immediately sent to Government Pleader, Bombay to do the needful in the matter.

The number of important exhibits can not also be given since no documents have been produced on behalf of Government.

All the record of the suit has been sent to the High Court for the purpose of the appeal and hence no copy of the Rozanama could be sent. The Government Pleader, Bombay, may be requested to get the same from the record sent to the High court.

The copy of the order appealed against can not be had - all records being now with the High Court.

No notice under Section 80 C.P. Code has been sent to me. Hence ~~the~~ copy of the same could not be sent. The The copy of the plaint has already been sent to your office. The same may be forwarded to the Government Pleader, Bombay. I may add that no notice was given to me by the learned Judge S.D., regarding the appointment of the Receiver in question.

sd/- X X X
District Government Pleader, Belgaum.

C.'21 — 63

These papers relate to a special jurisdiction suit No.103 of 1948 filed by Mr.Vinayakrao S.Patwardhan against the Province of Bombay and five others in the Court of the Civil Judge, Senior Division Belgaum. The facts are as under:

The plaintiff is the owner of five agricultural lands in the village of Ainapur Tal.Athni He leased these lands for the year 1946-47 to one Chandrappa for Rs.8900. This Chandrappa, did not cultivate the lands personally but sub-let them to defendants Nos.2 to 6. As sub-letting of the land was contrary to sec.5(2)(d) of the Bom.Tenancy Act,1939, the plaintiff at the end of the year applied to the Mamlatdar (urder sect.24(1A) of the Act for possession of the lands, after making Chandrappa and defendants 2 to 6 parties to that application. The plantiff says that the application was heard by the Tenancy Aval Karkun of Athni before whom defendants Nos.2 to 5 stated on oath that they ~~would~~ had restored to the plaintiff possession of the lands sub-let to them on the Padwa of 1947. The defendant No.6 contested the application and said that he was himself a tenant of the plaintiff and that the original lease was taken in the name of Chandrappa, " out of confidence," in other ~~avoid~~ words that the original lease was benami He therefore refused to hand over pssession of S.No.453 which was sub let to him. The Tenancy Aval Karkun however held that the plaintiff was entitled to possession of the lands and ordered restoration of possession to him.

The Plaintiff then says that the defendants 2 to 6 did not prefer any appeal or application against the Tenancy Aval Karkun's order. however, on 22.10.1947 Mr. Dalavai a member of the Legislative Assembly sent a letter to the Govt.

in which he questioned the correctness of the orders passed by the Tenancy Aval Karkun. Acting on this letter Govt. passed an order on 23 rd March 1948 setting aside the tenancy Aval Karkun's order and directing possession to be restored to defendants 2 to 6. Aggrived by Govt.'s order the plaintiff has filed this suit after giving notice for a declaration that Govt. order is illegal and for possession of the suit lands from defendants Nos.2 to 6 The papers of the case which have been forwarded by the Collr. through the Commissioner have not yet been received in this office and it has not therefore been possible to issue any instructions for the defence of the suit. It now transpires that the court has made an interim appointment of a receiver in respect of the suit lands. Against this order of appointment of a receiver the defendants Nos.2,4,5 and 6 have preferred an appeal in the High Court. The Province of Bombay is Respondent No.2 in that appeal. There is no copy of the order in these papers but from the contentions raised in the memcrandum of appeal it appears that the Court had not given any notice to the Govt.Pleader before appointing the receiver and had further held that Govt. order could not be supported under section 28 of the Tenancy Act of 1939 and that Govt.had not followed the procedure laid down in that Act or in the Land Revenue Code.

The Govt. Pleader, High Court has requested for sanction to defend the appeal. Govt. is only interested in supporting its own order of 23rd March 1948. The appellants are equally interested in supporting the same order. Govt. has not therefore to take up a contentious atitude against the appellants in this appeal. But before giving any instructions to the Govt.Pleader High Court, the D.G.P.may be requested to forward a copy of the Court's order for appointment of an interim receiver. The R.D. may at the same time be requested to forward the file containing Govt.'s order

No.7060/457 of 23rd March 1948.

Resubmitted.

The Court's order for appointment of the receiver has now been received from the District Government Pleader, The order is very short and simple. The Court has passed the order without assigning any reasons. As stated in the preceding note, Government has to support the appellants in their appeal against the said order. They will be the real contesting appellants. The Government Pleader, High Court may therefore be instructed in terms of the preceding note.

We have also received the R.D. file relating to the Government's order of 23 March setting aside the Tenancy Aval Karkun's order. From that file it appears that on receipt of Mr. Dalvai's letter of 29th October 1947 Government asked the Collector to submit a report on the case and to see that the possession of the lands in the cases decided by the Tenancy Aval Karkun was not transferred until further orders. He was also requested to obtain ~~and~~ a reoprt on the Tenancy Aval Karkun concerned. The Collector reported the facts of the two cases Nos. BTASR 123 and No. BTASR 159 (the present case) on 25th January 1948. With regard to the present case the Collector reported that Chandrappa had sub-let the suit land on 15-7-1946, that the tenant had admitted the sub-letting and had relinquished the lands after the expiry of the lease and informed

the sub-tenants accordingly, that defendants Nos. 2 to 5 had stated before the T.A.K. that they had voluntarily given up possession and only defendant No. 6 resisted possession. A similar report was made by the Tenancy Aval Karkun.

From the minute of H. M. (R) dated 19th March 1948 at p. 40 of the R.D. file No. 7060/45 it will be seen that Government set aside the Tenancy Aval Karkun's order on the assumption that if the land was sub-let in 1946-47 it must have been done in March or April 1946 i.e. before the Tenancy Act was applied. Both the Collector and the Tenancy Aval Karkun have categorically stated in their reports that the lands were sub-let on 15-7-1946 i.e. after the application of the Tenancy Act to Athni Taluka. If that be so, the Tenancy Aval Karkun was right in ordering restoration of possession to the landlord and Government's order will be indefensible on merits.

The only ground on which the suit can be defended is that the Government order was passed in exercise of powers under section 28 of the Tenancy Act which are analogous to the powers under section 211 of the Land Revenue Code. Under the latter section Govt. can annul a subordinate revenue officer's order even if it is a valid order (Secretary of State V. Anant Mulkar 36 Bom.L.R.242). A brief has been prepared on that line and if R.D. agrees the suit may be defended on those lines.

ante p. 59 post.

4/7

4/7/49

~~A.E.A~~ A.C.R.

I do not think that the decision in 36 B.L.R. 242 quoted by A.S. can be relied upon for defending this suit, for in that case the question was whether Govt. could revise an order which was lawfully made by the lower and that order was an administrative order. Under the Bombay Tenancy Act, 1939, certain administrative Tribunals have been created and are given powers to decide disputes between landlords and tenants. These powers are quasi judicial powers and, if the orders passed in exercise of such quasi judicial powers are to be revised by Govt., they will have to be done in conformity with the provision of the Act. It follows, therefore, that ~~even~~ if an order passed by a Tenancy Aval Karkun is valid, Govt. cannot revise that order by invoking its revisional powers under section 28 of the Bombay Tenancy Act, 1939.

The landlord in the present case applied to the Tenancy Aval Karkun for a declaration that the tenancy is terminated and for eviction and possession of the lands. The ground alleged by him was that there was sub-tenancy of the lands in contravention of section 5(2) of the Bombay Tenancy Act. The Tenancy Aval Karkun held that the tenancy was lawfully terminated on account of sub-tenancy and the sub-tenants (opponents) 2 to 5 had already relinquished possession and that the sub-tenant (opponent) 6 who retained possession of one of the leased lands should hand over possession to the landlord. Govt. in exercise of powers vested under section 28 set aside this order of the Tenancy Aval Karkun. The question raised for consideration is whether this order of Govt. can be defended.

Under section 5(2) a landlord is given power to terminate the tenancy of a protected tenant under certain circumstances. This is a power...

power which can be exercised by him without recourse to any court or any authority and the question whether he has lawfully terminated the tenancy would arise only when he proceeds to evict the tenant by due process of law and in such proceedings the validity or invalidity of the termination of tenancy can be decided. Consequently, the Tenancy Aval Karkun had no power to declare that the tenancy was lawfully terminated by the landlord, though valid under section 5(2). Nor had the Aval Karkun any power to confirm the possession of the ~~land~~ landlord if the landlord had lawfully evicted or obtained possession from the ~~tenant~~ sub-tenants. It would be open to ~~him~~ the landlord to retain such possession and to resist any encroachment on his rights, but the Tenancy Aval Karkun had no power to confirm the possession ~~of~~ the landlord. One of the sub-tenants, who had retained possession, was ordered to surrender possession ~~of~~ to the landlord. Obviously, this order was passed by the Tenancy Aval Karkun under section 24(1A) of the Bombay Tenancy Act. It is true that under that provision the landlord cannot obtain possession except under an order of the Mamlatdar. This provision does not oust the jurisdiction of the civil court or the Mamlatdar's court (see sections 20 and 21). Ordinarily, a landlord who desires to evict a tenant on the ground of termination of tenancy is required to approach either the civil court or the Mamlatdar's court. When the jurisdiction of such court is still retained by the Bombay Tenancy Act, 1939, and when section 24(1A) prohibits the landlord from obtaining possession except under an order of the Mamlatdar, obviously a conflict between the provisions will arise. The only way to reconcile these provisions would be that the ordinary jurisdiction of the civil court being retained, a landlord will have first to go to the civil court or to the Mamlatdar's court

for

27-68

for an order of eviction and thereafter he must approach the Mamlatdar under section 24(1A for obtaining possession. If this interpretation is correct, it appears that the Tenancy Aval Karkun had no jurisdiction to order the sub-tenant to hand over possession to the landlord. Attention is also invited to sections 4(2) and 7(2) whereunder special provision is made for enabling the tenants to obtain possession and this is consistent with section 24(1) where the words are "under any of the provisions of this Act". In such cases, the jurisdiction of the civil court is barred. There is no provision in the Act excluding the jurisdiction of the civil court for obtaining possession of a land by the landlord on the ground of termination of tenancy under section 5(2). It follows, therefore, that the order of the Tenancy Aval Karkun was not correct and it was validly revised by Govt. The order passed by Govt. is therefore correct on all points. I suggest that the suit may be defended on the aforesaid grounds.

RK 11/7

RLA 12/7 We may instruct the AGP to work in collaboration with the vacant Opponent

The A.L.R's note has been inserted under

RLA ALR RK 15/7

R.L.A 15/7

-29

29/67

Order.

Mr. C.D.Gumaste Pleader is appointed a receiver of the suit lands. He should arra nge to take possession of the lands from defts 2 to 6 and manage them, lease them to tenants and collect the rent. He is given the powers specified in rule 1(D) of order 40 of the Civil Procedure Code. Mr. Gumaste to furnish security in the sum of Rs.500. Costs of application costs in the cause.

Sd. B.K.Khade.
Civil Judge,S.D.

29th January 1949.

Jalkdi P. P.--(J) J 9—4000—6-49
G. O., L D., No. 1193 dated 7-12-15

(Govt. Pl, H. C. Bom,—Spl. Form No. 2)

No. 3652

From

THE GOVERNMENT PLEADER, HIGH COURT,

BOMBAY;

To The Remembrancer of Legal Affairs,
~~THE DISTRICT MAGISTRATE OF~~ Bombay.
~~COLLECTOR OF~~

Bombay, 26-7-1949

SIR,

Referring to this office No. 1294

dated 11-3- 1949, I have the honour to inform you that the Case noted in the margin was heard by the High Court on

Appeal From Order No.16/49 in Spl.Suit No.103/48 Siddappa Balappa Ghanigar. Vs. The Province of Bombay.

30-3-49 when the following order was passed:—

"The Court allows the appeal and sets aside the order of the lower Court directing the appointment of the Receiver. Appellant will get his costs from the Original Plaintiffs. And respondent is not entitled to his costs. "

Your most obedient servant,

Government Pleader, High Court.

1155
A-28-7-49

Legal Dept.

Please see overleaf a letter dt. 26/7 from the Govt. Pleader High Court, Bombay intimating the result of the Civil Appeal No 16/49 filed by the plaintiff in Civil Suit No. 103 of 1948 challenging the validity of the Court's order for appointment of an interim receiver. The High Court has allowed the appeal and has set aside the lower Court's order appointing a receiver.

For orders -

26/8

A.S. 26/8

33

Reg. C.S.No. 103 of 1948.
Belgaum, 25th December 1949.

To,.

The Remembrancer of Legal Affairs, Bombay.

subject:- Belgaum Civil Suit No. 103 of 1948.

Sir,

I have the honour to sendkxxx herewith a written Statement, in the aboe suit drafted on lines suggested by you. Kindly send the same after your approval of the same before 13th Januory 1950, when the written Statement is to be filed in Court.

21502
29.12.49
A

Yours faithfully,

Dist. Govt. Pleader, Belgaum.

encld.
Letter from the DGP.
Belgaum over leaf may
be seen. He has sent
D.S. in ref. No 103/48
for approval
AR
29/12

A.S

Reg. Suit No. 103 of 1948.

In the Court of the Civil Judge, S.Dn, Belgaum.

1. Vinayakrao Shripatrao Patwardhan, Brahmin, Agriculturist, aged 45 years, inhabitant of Miraj. | PLFF.

Against.

1. The Province of Bombay and five others. | DEFTSS

Herein the Written Statement of Defendant No.1 is as follows:-

1. The claim of the plff is denied by Deft No. 1 in toto.

2. The plaint does not disclose any cause of action against this defendant.

3. The order passed by the Government in Revision No. 7060/45 dated 23-3-1948, is intra vires and legal. The Tenancy Aval Karkun had no justification ~~to grant~~ to terminate the tenancy nor had he the ~~the reliefs asked for by the plff from him~~. The Govt. therefore had jurisdiction to revise ~~the said order~~ and pass an order which were just and ~~legal~~.

4. ~~This defendant does not admit the allegations~~ made by the ~~plaintiff with reference to the procurement~~ of the said order ~~from Government though the agency of~~ Mr. Dalavai. ~~The said allegations are malicious~~ and made to prejudice the ~~court~~, against the ~~Defendant~~. In fact the order in Revision ~~has been~~ was passed by Govt. ~~on consideration of the~~ after considering the merits of the case, and ~~on a construction of~~ the relevant provisions of the Tenancy Act.

5. The Defendant is not liable either for mense profits or the costs asked for by the Plaintiff.

6. The order passed by the Government in Revision being made bonafide ina judicial proceedings is binding on plff and no action at common law lies against Govt.

7. The suit should therefore be dismissed against this defendant with costs.

District Govt. Pleader,
Belgaum.

I, B.V.Jakati, District Govt.Pleader,Belgaum do hereby solemny state that what is mentioned in the aobe para 1 to 7 is true to the best of information (. as gathered from the record) and instructions. This varification is made at Belgaum, on the day of 1950.

District Govt. Pleader,
Belgaum.

Suits:

Belgaum.

For a declaration that the order of Government in Government letter, Revenue Department, No. 7060/45-F, dated 23rd March 1948, stating aside the Tenancy Aval Karkun's Order in Tenancy Case No. B.T.A.S.R. 159, is illegal and *ultra vires*, that defendants Nos. 2 to 6 are not the tenants of the plaintiff in respect of the suit lands and for possession of the suit lands with past and future mesne profits.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 9348.

Bombay Castle, 19th August 1949.

Letter from the Collector of Belgaum, No. L.A.W. 741, dated the 14th March 1949—Forwarding the papers in the suit noted in the margin; and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BELGAUM.

Civil Suit No. 103 of 1948.

Vinayakrao Shripadrao Patwardhan ... Plaintiff;

versus

The Province of Bombay and others. Defendants.

Endorsement by the Commissioner, Southern Division, Belgaum, No. A.D.M. 414, dated the 11th April 1949—Forwarding the above.

Memorandum to the District Government Pleader, Belgaum, No. 8350, dated the 23rd July 1949—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

original

G. R. No. 9348, L. D., dated the 19th August 1949.

To

*The Revenue Department,
*The Collector of Belgaum,
*The Commissioner, Southern Division,
The District Government Pleader, Belgaum (with two copies of the Brief).

*With a copy of the brief.

No. of 1949.

Copy forwarded for information and guidance to

Issued on 18/1/1950.

Submitted after issue
Dilkush S. Belgaum/S 5 (new
19-1
SA 19a 19/1

-39-1/6-9

BELGAUM CIVIL SUIT No. 103 OF 1948.

Chronological Statement of Facts.

The suit is for a declaration that order of Government in Government letter, Revenue Department, No. 7060/45-F, dated 23rd March, setting aside the Tenancy Aval Karkun's Order in Tenancy Case No. B.T.A.S.R. 159 is illegal and *ultra vires*, that defendents Nos. 2 to 6 are not the tenants of the plaintiff in respect of the suit lands and for possession of the suit lands with past and future mesne profits.

2. The plaintiff is the owner of five agricultural lands in the village of Ainapur, Taluka Athni. He leased these lands for the year 1946-47 to one Chandrappa Yesu Dhanavade for Rs. 8,900. Chandrappa did not cultivate the lands personally but sub-let them to defendants Nos. 2 to 6. As sub-letting was contrary to section 5 (2) (*d*) of the Bombay Tenancy Act, 1939, the plaintiff at the end of the year applied to the Mamlatdar under section 24(*1A*) of the aforesaid Act for possession of the lands. Chandrappa and defendants Nos. 2 to 6 were parties to that application.

File II, p. 73.

3. On 22nd September 1947, the Tenancy Aval Karkun who heard the application, decided that plaintiff was entitled to possession and ordered restoration of possession to him.

4. The defendents Nos. 2 to 6 did not prefer any appeal against the Tenancy Aval Karkun's Order. However after considering the reports of the Collector and the Tenancy Aval Karkun on this case Government passed an order on 23rd March 1948 setting aside the Tenancy Aval Karkun's Order and directing possession to be restored to defendents Nos. 2 to 6.

5. On 30th August 1948 the plaintiff gave notice of suit under section 80 of the Civil Procedure Code and on 8th November 1948 he filed the suit in the Court of the Civil Judge, Senior Division, Belgaum.

Grounds of Defence.

Government has only to support its order of 23rd March 1948, setting aside the Tenancy Aval Karkun's Order. It has no further interest in the suit. Government is not and has never been in possession of the suit lands. It should therefore be contended that so far as the reliefs for possession and mesne profits are concerned the plaint discloses no cause of action against Government.

2. Under the Bombay Tenancy Act, 1939, certain administrative Tribunals have been created and are given powers to decide disputes between landlords and tenants. These powers are quasi judicial powers and, if the orders passed in exercise of such quasi judicial powers are to be revised by Government, they will have to be done in conformity with the provisions of the Act. It follows, therefore, that if an order passed by a Tenancy Aval Karkun is valid, Government cannot set aside that order by invoking its revisional powers under section 28 of the Bombay Tenancy Act, 1939.

The landlord in the present case applied to the Tenancy Aval Karkun for a declaration that the tenancy is terminated and for eviction and possession of the lands. The ground alleged by him was that there was sub-tenancy of the lands in contravention of section 5(2) of the Bombay Tenancy Act. The Tenancy Aval Karkun held that the tenancy was lawfully terminated on account of sub-tenancy and the sub-tenants (opponents) 2 to 5 had already relinquished possession and that the

sub-tenant (opponent) 6 who retained possession of one of the leased lands should hand over possession to the landlord. Government in exercise of powers vested under section 28 set aside this order of the Tenancy Aval Karkun. The question raised for consideration is whether this order of Government can be defended.

Under section 5 (*2*) a landlord is given power to terminate the tenancy of a protected tenant under certain circumstances. This is a power which can be exercised by him without recourse to any court or any authority and the question whether he has lawfully terminated the tenancy would arise only when he proceeds to evict the tenant by due process of law and in such proceedings the validity or invalidity of the termination of tenancy can be decided. Consequently, the Tenancy Aval Karkun had no power to declare that the tenancy was lawfully terminated by the landlord, though valid under section 5 (*2*). Nor had the Aval Karkun any power to confirm the possession of the landlord if the landlord had lawfully evicted or obtained possession from sub-tenants. It would be open to the landlord to retain such possession and to resist any encroachment on his rights, but the Tenancy Aval Karkun had no power to confirm the possession of the landlord. One of the sub-tenants, who had retained possession, was ordered to surrender possession to the landlord. Obviously, this order was passed by the Tenancy Aval Karkun under section 24 (*1A*) of the Bombay Tenancy Act. It is true that under that provision the landlord cannot obtain possession except under an order of the Mamlatdar. This provision does not oust the jurisdiction of the civil court or the Mamlatdar's court (*see* section 20 and 21). Ordinarily, a landlord who desires to evict a tenant on the ground of termination of tenancy is required to approach either the civil court or the Mamlatdar's court. When the jurisdiction of such court is still retained by the Bombay Tenancy Act, 1939, and when section 24 (*1A*) prohibits the landlord from obtaining possession except under an order of the Mamlatdar, obviously a conflict between the provisions will arise. The only way to reconcile these provisions would be that the ordinary jurisdiction of the civil court being retained, a landlord will have first to go to the civil court or to the Mamlatdar's court for an order of eviction and thereafter he must approach the Mamlatdar under section 24 (*1A*) for obtaining possession. If this interpretation is correct, it appears that the Tenancy Aval Karkun had no jurisdiction to order the sub-tenant to hand over possession to the landlord. Attention is also invited to sections 4(2) and 7(2) whereunder special provision is made for enabling the tenants to obtain possession and this is consistent with section 24(*1*) where the words are "*under any of the provisions of this Act*". In such cases, the jurisdiction of the civil court is barred. There is no provision in the Act excluding the jurisdiction of the civil court for obtaining possession of a land by the landlord on the ground of termination of tenancy under section 5(2). It follows, therefore, that the order of the Tenancy Aval Karkun was not correct and it was validly revised by Government. The order passed by Government is therefore correct on all points.

S Belgaum 1/50
(New file)
20/1

Jmkdi. P. P.—(J) J 11—2000—6-49
G. O., L. D., No. 1198 dated 7-12-15

[Spl.—Govt. pl. H. C., Bom. 8 e.

1/50

No. 644

41 - 17

From

THE GOVERNMENT PLEADER, HIGH COURT,
Bombay;

To The Remembrancer of Legal Affairs,
~~The Secretary to Government, Legal Department.~~
Bombay.
~~The Collector of~~
~~The District Magistrate~~ of

L. D.
18 FEB 1950

Bombay, 14-2-1950.

Sir,

With reference to this office letter No. 3652, dated 26-7-1949,

from order

~~Appeal~~/~~Application~~ No. 16 of 1949 in Spl. Suit No. 103/48

Certified copies of High Court Jugment and Decree.

I have the honour to ~~forward~~/~~return~~ herewith papers in the case as noted in the margin, ~~and to request the favour of your acknowledging the receipt thereof~~

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No. 2786
Dated 17.2.50
A

I have the honour to be,
Sir,
Your most obedient Servant.

Government Pleader, High Court.

#786

17-2-50

Submitted with BBS. (S. Bel. 1/50)

This is a certified copy of the Judgment & Decree in Civil Appeal No. 16 of 1949 arising from Court's Order directing the appointment of a Receiver.

~~This~~ No action appears necessary on this and may be filed in S. Bel. 1/50

7-3

7/3

1025

43

Copy applied for on 9-4-49
Copy ready on 14-1-50
Copy delivered on 11-2-50
sent by ~~V. P. P.~~ Regd. Post on

Assistant Superintendent

APPEAL No. 16 OF 1949 FROM ORDER.

(With C. A. No. 283 of 1949.)

Shidhappa Ghaniger and others (Original Defendants Nos. 5 and 6) ... ... } Appellants;

versus

Vinayakrao Shripatrao Patwardhan, and others (Original Plaintiff and Defendants Nos. 1, 3 and Receiver respectively) ... } Respondents.

Appeal against the order, dated 29th January 1949, passed by B. K. Khade, Esquire, Civil Judge (Senior Division) at Belgaum on Exhibit No. 10 in suit No. 103 of 1948.

Counsel Mr. Purshottamdas Tricumdas with Mr. H. F. M. Reddi, Advocate for the Appellants

Mr. P. N. Gokhale, Advocate for Respondent No. 1.

Mr. K. G. Datar for the Government Pleader for Respondent No. 2.

30th March 1949.

(CORAM :—Bavdekar and Shah, JJ.)

Oral Judgment: (*Per Shah, J.*)—This is an appeal filed against the order of the Civil Judge, Senior Division, Belgaum, in suit No. 103 of 1948 appointing a receiver in respect of certain lands situate in the village of Ainapur, taluka Athani, district Belgaum. The plaintiff filed a suit seeking to obtain possession of about 52 acres of land from the defendants Nos. 2 to 6 alleging that they were at one time sub-tenants in respect of lands belonging to the plaintiff; that thereafter they delivered possession of the property to the plaintiff; that summer operations were carried on in respect of these lands and ultimately defendants Nos. 2 to 6 wrongfully entered into possession of the land and consequently they were liable to deliver possession of the property and to pay mesne profits. The contention of the defendants was that they were throughout in possession of the land; they did not deliver possession of the land to the plaintiff and they were entitled to the protection of the provisions of the Bombay Tenancy Act. After filing the plaint, the plaintiff applied for appointment of a receiver in respect of the lands which were in the occupation of the defendants. In that application it was stated *inter alia* that after the rent collecting period of the year 1946-47 defendants Nos. 2 to 5 made statements in proceedings against them that the lands in suit were not in their possession; that defendant No. 6 stated that he was not a sub-tenant of the plaintiff; that in proceedings under the Bombay Tenancy Act the Tenancy Mamlatdar after going through all the evidence ordered defendant No. 6 to deliver possession of the property, and accordingly the plaintiff obtained possesion of all the property at the end of the cultivating season 1947-48. But thereafter the order of the Tenancy Mamlatdar was set aside by the Government of Pombay purporting to act on the application of a member of the Bombay Legislative Assembly. It was further stated that the income of the property was about Rs. 10,000. and if the suit was decided in favour of the plaintiff, it would not be possible to recover the mesne profits past and future from the defendants; that defendants Nos. 2 to 6 with the help of certain other persons were making sub-divisions of the lands and that they were damaging the boundary marks and cutting down trees in the lands. Consequently, there was possibility of danger to the lands by the river water sweeping into the land and loss being sustained and this damage was such that could not be compensated for by money. Accordingly, the plaintiff prayed for the appointment of a receiver.

The learned trial Judge raised two points for determination in the application: (1) whether it was just and convenient to appoint a receiver of the suit lands, and (2) what order. In considering these two points the trial Court dealt with points which, in our opinion, were it was unnecessary to decide at that stage. The Court dealt in detail with the questions as to whether the order of the Government setting aside the order of the Tenancy Mamlatdar was *intra vires* the Government, and as to whether the possession of the defendants which, according to the Court, was continued only by virtue of the order of the Government, was lawful possession. The trial Court took the view that the order of the Government could not be sustained and defendants Nos. 2 to 6 were in the position of persons who were trespassers and their possession was wrongful. On the

Superintendent D. D.
14-1-1950

Rs. 2-7-0
Rs. 0-1-0
2-8-0

Total

To be credited to Govt
To be paid to G R. Deptl

Rs. As. Ps.
0-4-0
0-1-0
0-1-0

Rs. As. Ps. Fls. 16
Counting-folios 2-0-0
Scaling etc. 0-8-0
Total 2-8-0

Copying charges.
Comparing charges.

main question as to whether there was any waste committed by the defendants, the learned Judge contented himself by saying:

> "The lands are situated on the banks of the river Krishna. They are likely to be damaged unless good care is taken and the water of the river entering the lands is prevented from dashing against the lands. Defendants Nos. 2, 4, 5 and 6 are not *bona fide* possessors are not likely to protect the lands and this is likely irreparable damage to the lands."

According to the view taken by the lower Court the defendants were not even to pay mesne profits which may ultimately be decreed against them, rights of the plaintiff were invaded by the defendants.

In our opinion, the order passed by the learned trial Judge is plainly unsustainable. The question as to whether the possession of defendants Nos. 2 to 6 was lawful was a question which had to be decided ultimately at the trial of the suit and not on an interlocutory application. The question as to whether the defendants would ultimately be entitdel to meet the obligation to pay the amount of mesne profits decreed against them was also irrelevant in considering the application for appointment of a receiver. The only question which the Court was called upon primarily to apply its mind to was whether there was a genuine apprehension of waste being committed by the defendants to the property which rendered it just and proper that a receiver should be appointed for the protection of the plaintiff's interest. On that part of the case, the learned Judge does not appear to have given any categorical finding. His statement appears to have been merely hypothetical. According to him, if no good care was taken by the defendants, there was likelihood of damage being caused to the lands. He assumes that defendants Nos. 2, 4, 5 and 6 were not *bona fide* in possession of the land and on that assumption holds that there was likelihood of irreparable damage being caused. In our opinion, the hypothesis of the learned Judge was unwarranted and the inference that he has sought to draw from this hypothesis must be unjustified.

In another part of the judgment, the learned Judge says:

> " I have already pointed out that defendants Nos. 2, 4, 5 and 6 are not *bona fide* possessors of the lands. After the order passed by Government on 23rd March 1948, defendants Nos. 2, 4, 5 and 6 arrogated to themselves the position of tenants and have obtained orders for reasonable rent by making application to the tenancy Mamlatdar of Athani. It appears that the tenancy Mamlatdar has fixed the rent at Rs. 1,800. Being in wrongful possession they would be liable to pay a far greater amount for mesne profits. Some of the defendants are not in a position to pay the mesne profits. They are not likely to protect the lands which stand the risk of being innundated by the river Krishna as they have very little interest in the lands except to enjoy them and make as much profit out of them as possible. So for the protection of plaintiff's rights, I think that the lands should be under the management of a receiver."

Here again, the learned Judge is repeating the same old remarks with an additional ground that the defendants have obtained an unwarranted order from the Tenancy Mamlatdar. As to whether or not the order is warranted is a matter which can only be decided by the revenue authorities and not by the civil Court, and there is no explanation why it should be assumed at this stage that the order of the Mamlatdar fixing the rent at an amount of Rs. 1800 was unwarranted. The trial Court has got to decide important disputed questions as to the nature of the possession of the defendants. The validity of the order of the Government and the validity of the order of the Mamlatdar fixing the amount of rent those are all questions which will have to be decided at the trial and they could not be decided at an interlocutory stage.

As stated before, on the main question as to the possibility of damage being caused to the land, the learned Judge does not appear to have given any clear finding and in our view there is no sufficient evidence on which a conclusion could be arrived at supporting the order of the lower Court appointing a receiver. We think that the order of the lower Court must be set aside. Accordingly, we set aside the order of the lower Court directing the appointment of a receiver. The appellant will be entitled to his costs from the original plaintiff. The second respondent is not entitled to his costs as it was not necessary for him to appear.

No order on the civil application.

By order of the Court,

(Signed) S. H. BELAVADI,

Deputy Registrar.

M.L.S.

True Copy

for Deputy Registrar.

PRINTED AT THE GOVERNMENT CENTRAL PRESS.

The 14th day of January 1950

K.257

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HIGH COURT APPELLATE SIDE BOMBAY CERTIFIED COPY

In the High Court of Judicature at Bombay.

Wednesday the 30th day of March 1949.

Appeal No. 16 of 1949 from Order.

1. Sidhappa Balappa Ghaniger;
2. Chanmallappa Lakkappa Ghaniger.
3. Jakkappa Shiddappa Karchi.
4. Mallappa Shiddappa Karchi ... ... Appellants.

(Original defendants 2,4, 5 and 6)

Versus

1. Vinayakrao Shripatrao Patwardhan ;
2. The Province of Bombay.
3. Hanmant Kushmappa Khot ;
4. C.D. Gumaste ... ... Respondents.

(Original plaintiff and defendants 1,3 and Receiver respectively).

Claim Rs. 1,70,000 for Jurisdiction.

The plaintiff filed an application for appointment of a receiver of the suit property.

The application Ex. 10 in suit No. 103 of 1948 was decided by the Civil Judge, Senior Division, of Belgaum who passed an order appointing C.D. Gumaste Pleader as receiver as detailed in the judgment.

An appeal has been admitted in the High Court from the decision of the lower court. Notice was ordered to issue by the Honourable Mr. Justice Gajendragadkar on the 11th day of February 1949.

The grounds of objection to the decision appealed against are :-

(1) That the order of the learned Civil Judge is contrary to law, justice equity and the weight of evidence.

(2) That the learned Judge had no jurisdiction to make the order for an appointment of Receiver.

(3) That the order of the learned Judge is illegal and invalid and not binding on the appellants and the Government of Bombay.

(4) That the suit as well as the application for appointment of a Receiver are not maintenance.

(5) That the plaintiff had no cause of action either for the suit or for his application for appointment of a Receiver.

(6) That the learned Judge's order for appointment of a Receiver without notice to the Government of Bombay is - illegal and unenforceable.

(7) That the learned Judge has misread the pleadings and the evidence on record.

(8) That the learned Judge ought to have held that the order of the Government of Bombay dated 23-3-1948 was - perfectly legal and valid and was binding on the plaintiff.

(9) That the learned Judge erred in holding that the appellants were not entitled to invoke the aid of section 28 of the Bombay Tenancy.

(10) That the learned Judge erred in the construction of and in relying on section 89(2) of the Bombay Act No. 57 of 1948.

(11) That the learned Judge erred in proceeding to appoint a receiver without first deciding the question of jurisdiction of the Court.

(12) That the learned Judge erred in holding that the appellants are not bona fide possessors of the lands and are trespassers and therefore not likely to protect the lands from inudation.

(13) That the learned Judge ought to have seen that no case for appointment of a Receiver has been made out by the plaintiff.

- 147

(14) That the learned Judge ought to have seen that he could not supercede the orders of the Collector of Belgaum dated 17-11-1947 and of the Government of Bombay dated 23-3-1948 by appointing a Receiver.

(15) That the learned Judge ought to have been that no waste and/or destruction of suit property as required by law to justify the appointment of a Receiver were alleged and proved by the plaintiff.

(16) That the learned Judge erred in holding that defendants Nos. 2,4, and 5 admitted to have surrendered their possession.

(17) That the learned Judge erred in holding that the Government of the Province of Bombay did not follow the procedure under the Bombay Tenancy Act and/or the Bombay Land Revenue Code in making their order dated 23-3-1948.

(18) That the learned Judge has omitted to construe and consider the various documents produced by the parties to the suit.

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

(19) That the learned Judge has omitted to consider the material evidence on record.

(20) That the learned Judge has misappreciated the - evidence on record.

(21). That proper inferences are not drawn and probabilities not weighed.

(22) That the learned Judge has erred in relying on the entries in the Record of Rights based on the alleged receipts from Chandrappa.

(23) That the learned Judge ought to have been that the plaintiff and Chandrappa and the defendant No. 3 colluded to defeat the Tenancy Rights of the appellants.

(24) That the learned Judge ought to have held that the appellants were not the sub tenants of Chandrappa but were the protected tenants of the plaintiff.

(25) That the learned Judge ought to have seen that no Receiver could be appointed over the suit property - as the plaintiff had been served with a temporary -

injunction restraining him from obstructing possession of defendants Nos. 2,4,5 and 6 in their enjoyment of the suit properties in Civil Suit No. 6 of 1948 of the Court of Civil Judge Junior Division at Athani.

(26) That the order of appointment of Receiver is not just and proper.

(27) It should have been held that the appellants were in continuous and actual and legal possession of the suit property from the year 1946.

(28) That so long the entry in the Record of Rights showing the appellants as protected tenants the Civil Court - cannot give any relief ~~ex~~ to the plaintiff Land lord by way of appointment of Receiver or of that nature affecting possession.

Coram : Bavdekar and Shah, JJ.

For the reasons stated in the accompanying judgment, the Court allows the appeal, sets aside the order of the lower Court directing the appointment of receiver . Appellant will get his costs from the original plaintiff 2nd respondent is not entitled to his costs.

30th March 1949. Sd. S.H. Belavadi.

Deputy Registrar.

Bill of Costs in the High Court.

By the appellant.	Rs.As.Ps.
Stamps for Memorandaum of Appeal.	2-8-0
Stamps for copies of order	1-4-0
Stamps for Vakalatnama.	2-8-0
Bhatta for process.	15-0-0
Sectioner's fee.	2-6-0
Advocate's fee (one fourth)	285-0-0
~~xxxxx~~ Typing charges.	28-0-0
Translation fee.	8-0-0
Total	344-10-0

49

By the respondent No. 1.	Rs. As. P.
Stamps for Vakalatnama.	2-8-0
Advocate's fee.	285-0-0
Total	287-8-0

By respondent No. 2.	Rs. As. Ps.
Stamps for Vakalatnama (Govt. Pleader appears)	0-0-0
Advocate's fee (one fourth)	285-0-0
Total	285-0-0

Seal) Sd. S.H. Belavadi.

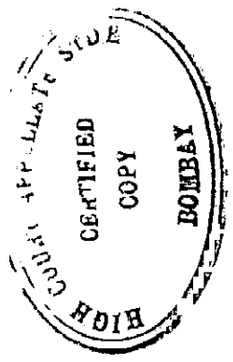
Deputy Registar.

The 30th day of March 1949.

True Copy

for Deputy Registrar.

The ~~day~~ 25th day of August 1949.



(Copy

K.J. No. 5667
16-4-49

No.1880

Office of the
Government Pleader, High Court,
Bombay 13th April 1949.

From

H.M.Choksi, Esqr., B.A.(Hons)LL.B.,
Government Pleader, High Court.

To

The Remembrancer of Legal Affairs,
Bombay.

Subject:- Appeal from Order No.16 of 1949.
(Shiddappa Balappa Ghaniger Vs.
The Province of Bombay).

Sir,

With reference to this office endorsement No.1294 dated 11th March 1949 on the above subject, I have the honour to state that the above appeal was decided on 30th March 1949, and to request you to accord a formal sanction for its defence.

I have also to state that the case was transferred to Mr.K.G. Datar, Advocate, High Court as both myself and Mr.B.G. Thakor were engaged in other courts.

Yours faithfully,

Sd/-
Government Pleader, High Court.

1/50

S3 - 127

No. O. S. 103 of 1948.
Belgaum, 23rd December 1950.

To

The Collector of Belgaum.

Subject:- Preferring an appeal against the decree in O.S.No.103/1948 on the file of the Civil Judge, Sr. Dn., Belgaum.

S I R,

With reference to the subject noted above and with ~~xxxxxxx~~ reference to your No. L.A.W.741, I have the honour to state, that in this case, the plff. sued for a declaration that the orders passed by the Govt. of Bombay, setting aside, the - order of the Tenancy Awal Karkun, at Athni, is illegal and ultra-vires. The plff. also prayed to set it aside. The contentions of defy.No.1 i.e., Bombay State, ~~mainly~~ were, ~~mainly~~ that the order of the Govt. is intra-vires and that the Civil Court has no jurisdiction to call in question the order of the Govt. The Civil Judge gave findings in favour of the - plff. on both the questions ~~xxxx~~ mentioned above.

2. It is submitted that the said findings do not appear to be correct on the following grounds :-

(1) Sec. 28 of the Bombay Tenancy Act empowers the Govt. to revise any order passed by the subordinate Revenue Officer. The Govt. can do it either ~~soumoto~~ on its motion or on the application of any aggrieved party. The Civil Judge holds in this case that the Govt. was wrong, because, it revised the order of the Tenancy Awal Karkun, on the representation made by Shri. Dalawai and he calls it as a fundamental mistake. This - reasoning of the Civil Judge, does not appear to be correct, in view of the fact that the Govt. had ample powers to revise any order soumoto. It need not - receive any application from any body.

(2) The Civil Judge says in his judgment that the Govt. does not appear to have called for the case papers for their perusal and review ofthe matter. This is a mistake, as it is clear from the correspondence that the reports from the subordinate officers were submitted along with the papers of the case.

(3) The 3rd point that was made out by the Civil Judge, is that notice ought to have been issued to the plff. - before deciding the case. Sec. 28 of the Bombay Tenancy Act or Sec.211 of the Bombay Land Revenue Code do not contemplate nor do they provide that it is obligatory on the Govt. to issue notices to the parties befc-re a decision is taken. Therefore, the reasoning of the Civil Judge, is not correct in this respect also.

(4) The last point that has been made out by the Civil Judge in this connection is that the Govt. ought to assign reasons for ~~upsetting~~ aside any ~~lower court's~~ order of the Lower Court, in their revisional capacity. This reasoning does not appear to be correct, in view of the wording of Sections 28 of the Bombay Tenancy Act and 211 of the Bombay Land Revenue Code. The provisions of these two Sections do not require that reasons should be given for support--ing any order, just as, ~~in~~ it is necessary for any - judgment or finding of a Civil Court ~~to be supported by reasons~~, under the provisions of the Civil Proce--dure Code. If it had been the intention of the Legis--lature that the Govt. should assign reasons for any order in revision, the Legislature would have clearly provided some such provisions, as are to be found in the Civil Procedure Code. From the above discussion, it is quite clear that the reasons of the Civil Judge are not correct.

(5) Issue No.1 :- ~~If~~ Whether plff. proves that orders of Bombay Govt. ~~xxxxxxxxx~~ dated 23-3-1948, was ultra-vires & if so can it be set aside by this Court ?
It is contended by the plff. that Govt. had no juris--diction to pass the order in Revision at all under Sec. 28 of Act of 1939. Whether Govt. had jurisdic--tion to interfere in Revision would depend on the question whether the order passed by Tenancy Awal Karkun was legal and within the jurisdiction conferred by the Tenancy Act on the Awal Karkun . Obviously this order was passed by the Awal Karkun under Section -

24 (1-A) of the Act 1939. It is true that under that provi-sion, the Land-Lord, cannot obtain possession except under an order of the Mamlatdar. This provision, however does not pust the jurisdiction of the Civil Court or the Mamlatdar's Court vide Secs. 20 and 21 of the Act 1939. Before the Act came into force, a land lord had to file a civil suit in order to recover possession from a tenant on the ground that the Tenancy had terminated. It is clear from the words "suss" "decree" and "Court" used in Sec.20, that this right of a land lord to file suit has not been taken away. These provisions of the Act, therefore show that the land lord has to file a civil suit in order to obtain possession on the ground that the Tenancy has terminated. The question, therefore, that arises from the interpretation of this section, is, what is the exact effect of Sec. 24(1-A) which provided that no land lord shall obtain possession of any land except under an order of a Mamlatdar. Their Lordships of the Bombay High Court, - after considering Secs. 20 and 21 of the Tenancy Act of 1939 read with Rule 4 of the Bombay Tenancy Rules of 1947, and sub sections of Sec.24 of the Act have expressed the opinion that it is impossible to believe that in enacting Sec.24(1-A), the Legislature intended that the right of a land lord, to obtain possession of a land from his tenant, should be inquired into, by two different Tribunals (i.e. civil courts and the Mamlat-dar's Cunt or that after rights of parties had been adjudicated upon, by Civil Court, the Mamlatdar's Court should reopan the matter and hold a fresh inquiry. In the opinion of the High Court, the only proper interpretation that can be placed upon Sec. 24(1-A) read with Secs. 20 and 21 and the - other provisions of the Act is that, it does not apply in cases in which decrees have been passed by Civil Court. High Court further has held that not-with-standing Sec. 24(1-A) of the Act, a Civil Court is competent to try a suit filed by a land lord and that Sec.24(1-A) applied only in those cases in which a land lord seeks to recover possession from his tenant, otherwise than by virtue of a decree of a Civil Court or an order obtained in a proceeding under the Mamlatdar's Court's

Act which has the force of a decree. When the jurisdixtion of Civil Courts, is still retained by the Bombay Tenancy Act, and when Sec.24(1-A) prohibits the land lord from obtaining possession except under an order of a Mamlatdar, obviously a conflict of jurisdiction would arise. The ordinary jurisdiction of the Civil Court, being retained, a land-lord will have,first,to go to the Civil Court or to the Mamlatdar's Court for an order of eviction and thereafter, he must approach the Mamlatdar under Sec. 24(1-A) for obtaining possession. If this interpretation is correct, the Tenancy Awal Karkun would have no jurisdiction to hand over possession to the land lord. There is no provission in the Act, for obtaining possession of the land from the tenant excluding the jurisdiction of the Civil Court, on the ground of termination of tenancy under Sec. 5(2) of the Act. It follows therefore, that the order of the Tenancy Awal Karkun is incorrect and without jurisdiction, the Tenancy Awak Karkun had no powers to declare as he seems to have done, that the Tenancy was lawfully terminated by the land lord, nor had he any power to confirm the possession of the land lord, If the land lord, had lawfully -- obtained possession from Sub Tenants, it would be open to the land lord, in these circumstances either to retain such possession and to resist any encroachment on his Rights and to ask for possession either in Civil Suits or in a proceeding for possession under the Mamlatdar's Courts Act on the ground of termination of tenancy for subletting by the tenant. The order of the Tenancy Awal - Karkun being illegal and without jurisdiction, it follows that Govt. can interfere in Revision. Once it is held that Govt. can revise the order, no suit would lie for declaration that the order of Govt. is illegal.

For the reasons given above and those appearing in the brief, it is requested that an appeal should be preferred against the decree in question.

Un-Certified copies of the judgment and the decree are sent herewith for perusal and necessary action, for the present.Their certified copies will be sent to him,after obatining them from the Court.

The decree has been passed on the 30th of November 1950

57

and the appeal will have tobe filed in the High Court within 90 days excluding the days required for obtaining copies.

Yours faithfully.

Sd. B. V. Jakati.

Dist. Govt. Pleader,
Belgaum.

No. O.S. 103 of 1948.

Belgaum, 23rd December 1950.

Copy together with uncertified copies of judgment and decree, are forwarded with compliments, to the Remembrance of Legal Affairs, Bombay, for favour of necessary action.

Dist. Govt. Pleader,
B E L G A U M.

Legal dept.

Submitted for information.

The Collector's report for the institution of an appeal has been called for under this office letter No. 17630 dated 12th December 1950 and the same may be awaited.

28/12

A. Sole.

26-12

Resubmitted.

The Collector of Belgaum has not as yet submitted his report under Rule 132 of the B.O. Rules. A reminder may issue

24/1/51.

A-Sole. By Express Letter
Cor. 2-1-51.

Received on 15-11-1948.
Registered on 27-11-1948.
Decided on 30-11-1950.
Duration -

59 7331

Exh. 126.

In the Court of the Civil Judge, Sr. Dn.,
At Belgaum.

Spl. Civil Suit No. 103 of 1948.

Pleaders.

Shri. G.P. Kulkarni & R.B. Hanmantgad.

1. Vinayakrao Shripatrao Patawardhan, Brahmin, Agritulture, age 45 of Miraj. — Plff

AGAINST.

S.M.B.V.Jakati. 1. The Province of Bombay.
" S.V.Mahajan. 2. Shiddappa Balappa Ghaniger, Lingayat Agriculture, age 30, of Ainapur.
" S.P.Manoli. 3. Hanamant Kushnappa Khot, Maratha, Agriculture, age 30 of -Do-
" S.V.Mahajan. 4. Chanamallappa Lakkapa Ghaniger, Lingayat agritulture, age 60 of -Do-
-Do- 5. Jakkappa Shiddappa Karchi, Lingayat, agriculture, age 60 of -Do-
-Do- 6. Mallappa Shiddappa Karchi, age 55, rest -Do-

— Defendants.

Claim Rs. 10959-8-6 + 200/- for court fees.
" Rs.1,70,000-0-0 for jurisdiction.

The plff. sues for a declaration that the order passed by Deft. No.1 on 23-3-1948 is illegal and ultra-vires, for a declaration that the defts 2 to 6 are not the tenants of plff; for possession of S.No.453 from deft. No.6; for possession of S.No. 459 from defts. 4 and 5; for possession of S.Nos. 460, 813 and 814 from defts. 2 and 3; for recovery of Rs. 10,000/- as past mesne profits for 1947-48 from defts. 1 to 6; costs and future mesne profits alleging that the suit lands belong to plff; that in 1946-47, he had leased the lands to Chandrappa Yesu by private auction at Rs.8900/-, that Chandrappa paid the

amount in advance to him, that Chandrappa sub-leased S.No.453 to deft.6, S.No.459 to deft.4 and 5 and S.No.460,813 and 814 to defts. 2 and 3, that deft.6 paid Rs.2000/- to Chandru, that defts. 4 and 5 paid Rs.4000/- to Chandrappa, that Defts. 2 and 3 paid Rs.4000/- in advance to Chandrappa, that after the sublease Chandrappa's tenancy terminated under Sec. 5 of Bombay Tenancy Act of 1939; that plff. was entitled to recover possession after 1946-47, that plff. applied to the Mamlatdar at Athni by a Tenancy application No.159 of 1947 for possession of the lands against Chandru and Defts. 2 to 6, that Defts. 2 to 5 stated before the Mamlatdar that they delivered possession of the respective lands to the plff. about the Padawa of 1947; that deft.6 stated before the Awal Karkun that he had directly taken the land S.No. 453 on Rs.1500/- from plff. directly, that the tenancy Awal Karkun awarded possession of all the lands to plff. that plff. got possession and ~~pafa~~ performed summer operations in 1947-48, that defts. 2 to 6 did not prefer any appeal against the order of the Tenancy Awal Karkun dated 22-9-1947, that Shri. N. B. Dalavai who is one of the Members of Legislative Assembly sent a letter to the Provincial Govt. on 29-10-1947 and another letter in the month of January 1948, that Shri. Dalawai requested the Provincial Govt. to reconsider the case decided by the Tenancy ~~Mamlatdar~~ Awal Karkun, that the Provincial Govt. by its letter dated 17-11-1947 addressed to the Collector stayed the delivery of possession to plff., that no notice was served on plff., that the matter was decided by the Provincial Govt. on 23-3-1948, and that the order of the Tenancy Awal Karkun was set aside, that plff. applied to the Provincial Govt. to supply him the grounds for setting aside the order of the Awal Karkun, that Govt. refused to supply them; that defts. 2 to 6 began to seize the possession of the lands forcibly that the proceedings under S.145 of Cr.P.Code were started and are still pending, that the order passed by the Provincial Govt. is illegal and ultra-vires, that defts. 2 to 6 are trespassers, that the cause of action arose in the month of March 1948.

Deft. 1 contends by W.S.(ex.79) that the Tenancy Awal K Karkun had no power to terminate the tenancy and to award pos--session to Plff., that Govt. orders passed in the Revision is intra-vires and legal, that the Govt. is not liable for mesne profits and costs, that the suit should bedismissed with costs.

Deft. No.38s pleader had no instructions vide Ex.77.

Defts. 2,4 to 6 by their W.S. Ex.90 contend that they are the protected tenants, that in 1946-47 they were not sub-tenants of Chandru Dhanawade, that Chandru was not the main tenant of plff., that Chandru and his son-in-law(deft.3) -- colluded with plff. and filed the Tenancy application, that plff. obtained the deposition before the Tenancy Head Clerk under some mispepresentations that they did not deliver posses---sion to the plff., that plff. never cultivated the suit lands by home farming in 1947-48, that at their instance, the Bombay Govt. passed an order setting aside the decision of the Tenancy Awal Karkun, that they never seized the possession of the lands in 1947-48 forcibly, that they are not trespassers, that the order passed by the Bombay Govt. is intra-vires and legal, that plff. cannot set aside that order, that this court has no --- jurisdiction to try this suit, that the plff. is not entitled to mesne profits, that the mesne profits claimed are very high, that the compensatory costs should be awarded to them, that t he suit should be dismissed with costs.

The issues for trial as per Ex.93 are :-

(1) Whether plff. proves that the order of Bombay Govt. passed on 23-3-1948 was illegal and ultra vires ? Can it be set aside ?

(2) Whether plff. proves the lease of all the suit lands to Chandru Yesu during 1946-47 and that defts. 2 to 6 were the sub-leasees of Chandrappa ?

(3) Whether on the termination of Chandrappa's lease, Defts. 2 to 6 are to be treated as tress-passers on respective lands as alleged in plaint ?

(4) Whether the questions raised by issues 1 to 3 can be tried by this Court ?

(5) Whether plff. is entitled to possession of respective lands from respective defts. as prayed ?

(6) Whether plff. is entitled to any past mesne profits ? If so, what mesne profits should be awarded to plff. against respective liable defts ?

(7) Whether this suit is ~~frivolous~~ frivolous ? Are Defts. 2,4 to 6 entitled to any compensation ? If so, what amount ?

(8) What orders and against whom ?

MY FINDINGS ARE:-

(1) Yes.
Yes.

(2) Yes.

(3) Yes.

(4) Yes.

(5) Yes.

(6) Yes on first part;
Rs. 8900/- from defts. 2 to 6 on second part.

(7) No.
No.

(8) As per order.

R E A S O N S.

1. The suit property consists of S.Nos. 453, 459,460, 813 and 814. They belong admittedly to plff. They are situate on the bed of Krishna river at Ainapur in Athni Taluka.

2. The case of plff. is as below :- In 1946-47, plff. leased out the lands to one Chandru for Rs. 8900/- by a private auction sale. Chandru sub-leased S.No.453 to Deft.No.6 on Rs. 2000/-, S.No.459 to Defts. 4 and 5 on Rs. 4000/- and S.Nos. 460, 813 and 814 to defts. 2 and 3 on Rs.4000/-. The lease was oral and for one year only. Plff., after the termination of tenancy of Chandru got a Rajinama purporting the delivery of possession from Chandru. Later on, plff. applied for possession against Defts. 2 to 6 before the Tenancy Mamlatdar as per Tenancy Act of 1939. The matter was decided by the Tenancy Head Clerk on 22-9-1947 and possession was awared to plff.. As against this

order, none of the defts. preferred an appeal either to the Collector or Commissioner or Revenue Tribunal. But Defts. 2, 4, and 5 and 6 approached Shri. Dalawai, a member of the Legistative Assembly of Bombay and complained to him the injustice done to them by the order of the Tenancy Head Clerk. On hearing them, Shri. Dalawai of Athni communicated by a letter dated 29-10-1947 (vide Ex.116) to Shri. Morarji Desai, the Honourable Home Misnister that some injustice was done by the Tenancy Head Clerk in this case and in another case and that the order passed by the Tenancy Head Clerk should be reconsidered. The Secretary to Govt. then stayed the execution of the order of the Tenancy Head Clerk through the Collector of Belgaum and Mamlatdar of Athni. The Govt. without issuing any notices to parties, set aside the order of the Tenancy Head Clerk and communicated that order to Shri. Dalavai by letter dated 23-3-1948(vide Ex.36). Plff. then made a representation to the Govt. to communicate to him the reasons or grounds for setting aside the order of the Tenancy Head Clerk. The Govt. replied to plff. on 15-4-1948, vide letter ex.37 that the reasons cannot be supplied. Plff., therefore, alleges that this order passed by the Govt. was ultra-vires and illegal and that the defts. 2 to 6 are tress-passers on the land after the decision of the Tenancy Head Clerk and after the termination of the tenancy of Chandru by the end of March 1947. Plff., therefore, claims a declaration and possession of the lands from respective tenants on the strength of his title.

3. Deft. No.1 is Govt. The Govt. maintains that the order passed by the Revenue Secretary is intra-vires and legal

4. The defence of Defts. 2, 4,5 and 6 is that they were the direct tenants of plff. during 1946-47, that they were not the sub-tenants of Chandru that after the termination of first tenancy, they cnntinued in possession as protected tenants that the order passed by the Govt. is legal and intra-vires and that this court has no jurisdiction to try a suit of this nature between the land-lord and the tenants.

5. Deft. 3 is exparte.

6. Issue No.2 :- Plff. opened the case at Exh. 111. According to him, he leased the lands for Rs,8900/- in 1946-47 to Chandru alone by private auction in his house at Miraj and that Chandru paid the amount in cash in advance to him. He has produced the receipt passed by Chandru on 11-7-46 at Exh. 115 appearing on page 35 of the Mamlatdar's papers. Plff. further adds that Chandru in his back, sub-leased S.No. 453 to deft.6 on Rs.2000/- in the same year, S.No.459 to Defts. 4 and 5 on Rs.4000/- and S.Nos.460,813 and 814 to defts,2 & 3 on Rs.4,000/-. He has cited Chandru at Ex.112 to support his story. Chandru Ex.112 supports plff. on the point of the main lease and the 3 sub-leases to defts. 2 to 6. Chandru ex.112 further adds that he got Rs. 2000/- from Deft No. 6, Rs. 4000/- from Defts 4 and 5 and Rs. 4000/- from Defts 2 and 3 in advance and accordingly passed separate receipts to separate sub-tenants. Those receipts are not forth-coming from Defts 2 to 6. The lease and the sub-lease as advanced by Plff and supported by Chandru, finds a place in Govt.record, vide Exhs. 5 to 9. The Govt. entry is exactly in confirmity with the main lease and the sub-lease narrated by plff. and Chandru. But this entry has been attacked by Defts. 2,4,5 & 6 to be incorrect, collusive and fraudulent in that it was got made by plff. in collusive with Chandru in order to avoid the effect of the Tenancy Act of 1939.

7. It is, therefore, essential on our part, to ascertain whether the Govt. entry is really collusive and fraudulent. Deft.6 (ex.117) maintains that he and defts. 2,4 & 5 took all suit S.Nos. for cultivation from plff. directly in 1946-47 for one year on Rs, 8900/- to be paid in advance and that accordingly on the payment of that amount to plff. divided the lands among themselves emicably. He further adds, that he agreed to pay Rs. 1500/- for his S.No. 453. Deft.No.5 (exh. 118) alleges that deft. 4 and he took S.No.459 on Rs.3700/-. Deft.2 (exh.119) alleges that he alone took 3 S.Nos. 460, 813 and 814 on Rs.3700/-. The terms of the sub-leases as

narrated by defts. 2,5 and 6 do not figure at all in their written statement (exhibit 20). In their injunction Suit No. 6 of 1948 filed in Athni Court by these tenants against plff., these very tenants had taken a stand that they taken these lands from plaintiff for a period of 5 years in 1946-47 and not for one year as alleged by them at present. Besides, during the statements of these very defts. before the Tenancy Head Clerk, the terms that were stated by them were quite different from those that are stated now. Defendant No.6 stated in his deposition Ex.34 that he took one land direct-ly from plaintiff on Rs.1500/-. Deft. 2 stated in his deposition ex. 35 that he and Deft. 3 took three lands on Rs. 4000/- direct;y from plff. Deft. 4 stated in his deposition Ex. 31 that he and Deft. 5 had taken one land directly from plff. on Rs.4000/-. In the tenancy column, vide Exhs. 5 to 9, the figures of rent of these various tenants are entered exactly as stated by plff. (ex. 111) and Chandru (ex. 112). It is, therefore, evident that the terms of the sub-leases which are narrated during the course of evidence vary from those figuring in their former statements before the Tenancy Head Clerk and those entered in the Govt. record. To crown all, these terms of sub-leases which are pressed before me by these tenants, do not figure at all in their written statements. I am, therefore, surprised to find that defendants 2, 4 to 6 are trying to push into evidence such terms of their tenancies which are not backed by their pleadings and Govt. records. No independent evidence

was adduced by defts. to prove their direct agreement with plff. and the settlement of the various rentals. It is admitted by deft. 6 (ex.117) that they had informed the village officers of their separate leases from plff. and that they had -- entered the separate leases accordingly in the Govt. record. If the village officers had acted on the informations - supplied by these tenants, it would be conclusive to hold that these tenants ought to have informed village officers, of the main lease of Chandru and their sub-leases from Chandru, otherwise the village officers who are disinterested persons were not expected to go beyond the supplied information. - Plff. is not a resident of Ainapur and was not expected to wield any influence over the village officers. More-ove r there is absolutely no evidence on the side of defts. to - establish any under handling of plff. in connection with the Govt. entry. For want of any satisfactory evidence to displace the truth of the Govt. entry, I am constrained to believe plff. (Ex.111) , Chandru (Ex.112) and the Govt. entries.

8. The falsity of the plea of defts. can be brought to the fore by the fact that defts. who are alleged to - have paid Rs. 8900/- to plff. in a lump sum, were expected to have a direct receipt from plff. for such a big amount. But it is surprising to note that the receipt Ex.115 - dated 11-7-1946 passed by plaintiff stands in the name of Chandru alone and not in the name of Defts. 2 to 6. - The explanation of the defts. is that Chandru was their trustworthy man and hen-ce the receipt was passed in his name , does not stand to reason and logic.

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Chandru was not a resident of Ainapur to which, these defts. belong and was reported to be absent at the time of the agree--ment and the payment of the amount to plff., vide depo--sition of Deft.6 (Exh. 117). If Chandru was not present at the time of the payments by the defts. to plff., there was no propriety for defts. to ask plff. to pass a receipt in the name of Chandru. To my mind, it strikes that the defence of the defts. is nothing but tissues of lies and that the story of plff. supported by Chandru and Govt. entry appears to be correct and consistant. I believe it and hold that plff. proves the main lease of Chandru and the sub-leases by Chandru to Defts 2 to 6 as alleged by plff. My finding on the 2nd isse is accordingly.

9. Issues 3 and 4 :- The learned pleaders of - defts. 1 to 6 take a strong objection to the jurisdiction of this Court to entertain this suit and to try questions pertaining to a lease and its determination and to the - recovery of possession. They are emboldened to take this stand on account of S. 24(1-A) of Tenancy Act 1939 - and Sec. 89 of the amended Tenancy Act of 1948. The amend--ed Tenancy Act of 1939 wasm made applicable to this side on 8-11-1946. The plff. applied to the Mamlatdar for posses--sion on 11-8-1947, vide Ex.114. The decision by the Bombay Govt. was given in March 1948 before the application ofthe Tenancy Act of 1948, vide Ex.136. Sec. 89 of the Tenancy Act of 1948 lays down that nothing in this Act or any repeal affected thereby shall affect or be deemed to affect any legal proceed--ings instituted before the commencement of the act and any such proceeding shall be continued or disposed of as if this act was not passed. The present suit has, therefore, to be decided with reference to Tenancy Act of 1939.

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10. Every party whose civil rights are agrreived or injured, has an ordinary remedy of runninfg to a civil - court to get them redressed as civil courts are the custodians civil rights of public. The jurisdiction of a civil court cannot be sadi to have been taken away unless the words used in the statue are such that necessary implicatic arises that the legislature intended that the civil court should not exercise jurisdiction in the matter. In the Act of 1939, there is no express rovision that no action for eviction will lie after the coming into force of S.24(1A) . It cannot also implied from the above section that the - legislature intended to oust the jurisdiction of the Civil court. On the contrary section 20 lays down" Where any tenancy of any land held is terminated for non-payment of rent and the land-lord sues or files any proceedings to eject the tenants, the court shall call upon the tenant to tender to his land-lord the rent in arrears together with the - costs of the suit or proceeding, or give such securit as its thinks fit for making such payment within 15 days and if the tenant complies with such directions within 15 days, the court, shall,in lieu of amking decree or passing an order for ejectment, pass an order directing that the tenancy had not been terminated." Before the Act of 1939 came to be applied, a land-lord was required to file a civil suit to recover possession from a tenant who had - defaulted in payment in rent. It is evident also from the words "sues, decree and court" used in this section that this right of a land-lord has not been taken away by the Act. The section 20 empowers the court also on the payment of the rent within 15 days by a tenant after he is called upon to do so by the court, to declare that his tenancy has not terminated.

11. Section 21 lays down," where any tenancy of any land held by a tenant is terminated on the ground that the tenant had done any act which is destructive or permanently injurious to the land, o suit or proceedings

for ejectement avainst such tenant shall lie unless and until, the land has served on the tenant a notice in writing specifying the act of destruction or - injury complained of and the tenant fails within the period of 1 year from the service of notice to restore the land in the condition in which it was before such destruction or injury". THIS SECTION AND section 20 show that the land lord has to file a civil suit in order to obtain possession of the ground that tenancy has terminated either for failure to pay the rent or becasue the tenant has done any act whci is destr uctive or injurious to the land.

12. The next question for our determination is what is effect of section 24(1A) upon the civic - rights of the public in approaching the civil court for the recovery of possession. Under section 24(1A) a - land-lord is required to file an application in a - prescribed form to the Mamlatdar for the possession of the land under any provisions of the Act. On the - receipt of the application, the Mamlatdar is required to hold an inquiry in the prescribed manner and to - pass such an order thereupon as he deems fit. Under section 24 clauses 3 and 4, an appeal shall lie to the Collector against the order passed by the Mamlatdar and such order of the Collector if not reviewed by the Government under section 20, is to be deemed as final. It has been argued at this stage by the learned Government pleader that the procedure laid down under section 24(1A) is required to be followed by the land-lord after he gets a decree for possession from the civil court under section 20 and 21 of the Act. The words of section 24(1A) are too wide to include such procedure. But this would lead an unwarreanted and unintended anamlous position. which we do not think, the legisature could have contemplated. Because the position in that case would be that the decree of the Civil court

which finally determined the rights of the parties will not operate as res-judicata and the order which will have the final effect will be order of the Mamlatdar or of the the Collector and not of the Civil Court. The decree passed by the Civil Court will then become in-operative and infructuous and the time spent by the court and the party and money spent by him in trying their rights before the Civil court will become wasted. I do not think that by enacting section 24(1A), the legislature intended that the land-lord sgould have two deffernt Tribunals to determine the tenancy and to recover possession or that after the rights of the parties had been decided by the civil court, the Mamladda r should re-open the matter and hold an inquiry thereto.

13. Putting a proper interpretation upon sections 20,21 and 24(1A), it appears to me that section 24(1A) does not apply to cases wherein a land lord has obtained the civio decree under section 20 and 21. Section 24(1A) appears to have been enacted to protect the rights of ingonant tenants who generally do not understand their rights under section 23 of the B.T. Act, according to which every lease of an agricultural land must be for a period of 10 years and that no lease can be terminated before the expiry of that period. Some times, the land-lords under undue influence or threat, compel the tenants to surrender possession privately. Section 24(1A) appears to have been enacted to ward off such michiefs that would be committed by the land-lords but section 24(1A) does not come in the way of the aggrieved party to adopt a civil remedy of approching the civil court under sections 20,21 and of the Act.

14. The above discussion was merely aca demic and was made because the pleaders raised these points during the course of the arguments. The questions in the present case are quite different to be tackled. Plff in this case seeks declarations that the order

passed by the Government was ultra vires and illegal and that the defts 2 to 6 being tresspassers after the termination of the tenancy of 1946-47 of Chandru and after the decision of the Mamlatdar to the effect that they are not tenants either ordinary or protected. It is an admitted fact that the lease of the Chandru was for only one year and was over by the end of March 1947. So I am not required in this case to determine whether the lease created in favour of Chandru was terminated or not. I am required to adjudicate upon whether the defts are in wrongful possession after the tenacy of Chandru expired. Section 28 of the said Act does not oust the jurisdiction of the court to adjudicate upon the legality of the order passed by the Govt, It is a case of an injury to a civic right of a party which I think, a Civil court can adjudicate upon. Plff has filed a suit on title to seek possession from illegal occupants of the lands in suit. The civil court has, therefore, every right to grant possession on the cause of action. The question of protected tenancy, raised by defts has cropped up incidently and it being an ancillary question, it can be decided by the court in order to ascertain whether they are tresspassers or not. In my opinion, therefore, this court has perfect jurisdiction to entertain and try the questinn involved in this suit.

15. The next important question that crops up for our determination is whether defts 2 to 6 are tress-passers on the land after the termination of the tenancy of Chandru and after the decision of the Tenancy Head Clerk vide ex.29, dated 22-9-1947. It is argued by the lerned pleader for defts 2, to 6 that his clients were tenants on the land on the date of the application of the tenancy of 1939 according to section 2A and their continuous holding of the land after the application of the said act, for more than a year, as per section 3A of the said Act, perfected their title as a protected tenant under section 3A and that as per section 23 of the said Act, their lease must

be deemed to have been created for a period of 10 yearrs prior to 1946-47 a nd hence the Mamlatdar had no right to determine their tenancy under section 5 Clause 2D and section 13(1) of the said Act. On the strength of such reasonings, he opines that the order of the Tena-ncy Head Clerk as perfectly legal and justified. He brings to my notice sec. 2 A which lays down the defination of the tenant and argues that on the date of the applicatio of this Act i.e on 8-11-1946 his cliets were lawfully cultivating the lands in the suit belonging to plff from him directly and that such lawful possession of his client was there, inspite of the fact, that they were sub-tenants of Chandru and therefore they should be deemed to be lawfu tenants on the lands, after the applicatin of the said Act. He hits further that section 5 clause 2 D of the said Act does n ot apply to his clients who were not protected tenants then in as much as sectinn 5 clause 2 D applied to the protected tenant. The above reasonings of the learned pleader for the defts 2, 4 to 6 are illconceived and have no legal backing. Plff in this suit has alleged in his application Ex. 114 that Chandru's tenancy had terminated and that he delievered the possession by the Rajinama Ex. 113 and the defts 2 to 6 being sub-leasees, the tenancy of Chandru was forfieted and that Chandru and defts 2 to 6 were not his tenants. This action was taken by plff on account of section 3 A and section 13 clause (1) Clauses A and B. The wording "every tenant" in section 3 A includes the main tenant and sub-tenant. The application was filed by the plff on 11-8-1947 i.e. within one year after the said Act was made applicable. So apart from the question whether defts 2 to 6 were sub-tenants of Chnadru and whether by the sub-leases, of Chandru, his tenancy was forfieted, the plff had every right to apply under section 2 A that the persons cultivating the land though lawfully were not his tenants after a certain period was over. So without relying upon the forfieture of Chandru's teancy

the Mamlatdar had everu right and every jurisdiction to entertain the application of the plff for a declaration that Chandru and Defts 2 to 6 were not his tenants after a perticuler period, within one year after the application of the Act under section 2 A clause 1 and to seek possession under section 13 clause 1 clause A read with section 24 clause 1 A-. He had also authority under section 3 A read with section 24(1A) and section 5 clause 2 (d) to grant a declaration that Chandru and defts were not protected teaants and to award possession on the ground of forfieture of Chandru's tenancy It is laid down in section 5 clause 2 clause D that teancy can be terminated if the teant had sub-let the land. In the present case after the termination of Chandru's teancny by the end of March 1947, the sub-leases of defts 2 to 6 terminated automatically, vide section 115 of the T.P.Act. So the Mamlatdar had every jurisdiction to terminate the tenancy under section 5 clause 2 clause D on the ground of forfieture. He had also full jurisdiction to declare either the defts were not ordinary tenants a fter the expiry of a perticular period under section 2 A clause (1) clause (B) or to declare that they were no the protected teants under section 3A clause (1) and to grant relief of possesion by way of corrolary to that declaration under section 13 clause 1 section 24 clause 1 (A) to plff. The Mamlatdar was perfectly justified to declare that Chandru and defts 2 to 6 were not either the ordinary tenants or protected tenants and to grant possesion to plff. Chandru was the lawfully cultivating tenant on the land on the date of the application of the said Act and was therefore eligible for the rights of the protected tenant provided, he would have resolved to continue on the lands. These deft who were the sub-lessees of Chandru could not be deemed to be lawfully cultivating the lands from the plff the land-lord as defined by section 2A of the said Act and section 13 clauses 14 and 15 of the Bombay Land Revenue Code, on the date of the application of this Act. The position of defts being already unlawful, was still made more unlawful om the terminatinn of the teancy of Chandru. Their position realy was that of

tresspasser's after the termination of Chandru's tenancy and after legal sanctity was given to such position by the decision of the Tenancy Head Clerk. The defts 2 to 6 cannot therefore improve their legal position after termination of Chandru's tenancy and the decision of the Tenancy Head Clerk inspite of the fact that they held the possession after 1946 - 1947. Plff's allegation that he got the possession by the end of Actober 1947 from the defts 2 to 6 and Chandru, cannot be believed as the names of defts continued in Government record in 1947-48 and therefore Chandru Ex. 112 as not given actual possession to plff. Some of the tenants appear to have admitted before the Mamlatdar, vide Exs. 30, 31, 32 and 35 that they had delievered possession to plff privately but those statements appear to be incorrect. The Govt. entry being unquestionable, I am bound to believe it. The sum and substanne of our discussion is that inspite of the holding of the lands by defts 2 to 6 after 1946-47, such holding of theirs was quite illegal after the termination of Chandru's tenancy and was declared so by the Tenancy Head Clerk. For the purpose of this suit, the conclusion is that they must be styled as tresspassers after 1946-47. My findings on issues 3 and 4 are --- accordingly.

16. Issue No.1 :- It is conceded by the learned pleader on both sides, that the Government has powers under section 28 of the said Act to review the order passed by the Mamladar or the Collector in Revision. Section 28 empowers the Government to Review the orders of the subordinate courts as a result of their powers under general and revenue administration. These powers are laid down in section 211 of the Bombay Land Revenue Code. Under section 211 of Bombay L.R.C. the Government can call for and examine the record of any inquiry or the proceedings of any subordinate Revenue Officers for the purpose of satisfying, as to the legality or propriety

of any decision or order passed and as to the regularity of the proceedings of such officers. But section 221 of the Bombay Land Revenue Code or section 28 of the Tenancy Act pre-supposes the filing of a motion to the Government at the hands of a party aggrieved by the orders of the subordinate revenue officers. But in the present case, it is an admitted fact that the defts did not complain to the Bombay Government. The complaint was launched by the M.L.A. Shriyut Dalavai on 29-10-1947 by a private letter addressed to Honourable Minister Home Department, vide Ex.116. I doubt if section 211 of Bombay Land Revenue Code and section 28 of the Teanncy Act empowers the Government to adopt such a novel course of revising the orders of the Subordinate Officers, by acting on a communcation from a stranger. This is a first fundamental mistake committed by the Government. The second fundamental mistake committed by the Government is that the Government does not appear to have called for the case papers for their perusal and review of the matter. From ex. 116 and the Tenancy case papers it appers that the Government called for the report from the Collector and the Collector called for the report from the Tenancy Mamlatdar. The report of Tenancy Mamlatdar appears on page 125 and 131. The act of Government in reviewing the matter without looking into the case papers and the acting on the mere report of the Collector and the Tenancy Head Clerk was certainly arbitrary and revoting. The third fundamental mistake was not issue notices to the parties and to give them an apportunity to plead their defences. It is conceded before me by the learned Government Pleader that no notices were issued to the parties by the Government. It is the primary right of the party against whom a decision is sought to be given, to be heard in his defence before the decision is given against him. It cannot be presumed that the Government however powerful it may be, is above the principles of natutal justice. If the Government wanted to decide against the plff, they were bound to hear him in the interest of natural justice. The forth glaring mistake committed by the Government is that they had not given their reasons or ground to show how the lower courts decision

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was illegal and incorrect. The Government acting in the revisional capacity were bound to assign the reasons for upsetting the lower court's order as they were passing a Judicial order under Tenancy Act. In these circumstances, it is most difficult on my part to up-hold that order of Government as legal and intravires. To me, it strikes, it is most illegal and ultavires in as much as there were no legal grounds for Government as provided by any section of the Tenancy Act, to set aside the order of the Tenancy Head Clerk who acted quite legally within the four corners of the Act, such order deserves to be declared as illegal and to be set aside. My finding on the 1st issue is - accordingly.

17. Issue No. 5 :- Plff is entitled to possession of the lands from the respective defts. My finding on the 5th issue is accordingly.

18. Issue No.6:- Plff has claimed Rs. 10,000/- as mense profits for the year 1947-48. The defts had filed application for fixing the reasonable rent to the Mamltdar and got them fixed at Rs. 750/- for S.No. 459, Rs. 380/- for S.No.453/and Rs.747/- for S.Nos. 460, 813 and 814. The reasonable rent was fixed on 22-9-1948, vide Exs. 59, 60 and 61. That matter, I am told is pending in appeal, so that decision cannot be taken as final and binding. The rent of the year 1946-47 was admittedly Rs. 8900/-. I award mense profits at that rate to plff for the next year i.e. 1947-48. The defts 2 to 6 are jointly liable to pay that mueh amount to plff. My finding on the 6th issue is accordingly:-

19. Issue Nos. 7 and 8 :- The suit is not frivolous. Defts 2, 4 to 6 are not entitled to any compensation. Plff succeeds and hence the following order:-

P.T.O.

O R D E R

(1) It is hereby declared that the order passed by the Government on 23-3-1948 is illegal and ultra vires.

(2) Plff do recover possession of S.No.453 from deft No.6, of S.No. 459 from defts 4 and 5, od S.No. 460, 813 and 814 from defts 2 and 3.

(3) Plff do recover Rs. 8900/- as fast mense profits for 1947-1948 from defts 2 to 6.

(4) Plff do recover costs of the suit from defts 2, 4 to 6. The dfts 1, 2 , 4 to 6 do bear their costs.

(5) An inquiry into future mense profits be had under Order 20 R. 12(c) of C.P.Code against defts 2 to 6 in connection with respective lands held by each or more of them.

sd. N.V.Ranasubhe.

30-11-1950. Civil Hudge, S Dn, Belgaum.

DECREE. 79 45

Special Civil Suit No. 103 of 1948.

In the Court of the Civil Judge, Sr. Dn., Belgaum.

1. Vinayakrao Shripatrao Patwardhan, Brahmin, Agriculturist, aged 45 years, inhabitant of Plff. Miraj.

Against.

1. The Province of Bombay.
2. Shiddappa Balappa Ghaniger, Lingayat, Agriculturist, aged 30 years, inhabitant of Ainapur Tal. Athni.
3. Lanamant Kushnappa Khot, Maratha, Agriculturist, aged 30 years, inhabitant of -Do-
4. Chanamalla Lakkappa Ghaniger, Lingayat, agriculturist, aged 60 years, inhabitant of -Do- Defts.
5. Jakkappa Shiddappa Karchi, Lingayat, agriculturist, aged 60 years, inhabitant of -Do-
6. Mallappa Shiddappa Karchi, aged 55 years rest -Do-

Claim Rs. 10,959-8-6 + 200/- for court fee.

" Rs.1,70,000-0-0 for jurisdiction.

The plff. above-named begs to submit as under :-

1. The subject matter of the suit consists of lands bearing:

S.No.	Measuring acres	Assessed at rupees.	Price rupees.
453	10-23	25-14-0	54,000/-
459	20-33	51-15-0	64,000/-
460	18-20	44-6-0	55,000/-
813	1-20	3-14-0	5,000/-
814	0-30	1-14-0	2,000/-

situated at Ainapur in taluka Athni in the District of Belgaum.

2. The lands described above, belong to the plff. For the year 1946-47, plff. leased the said lands by auction to -- Chandrappa Yesur Dhanavade of Ganeshwadi, who offered in his best

bid, being Rs. 89,000/-. This amount was paid by Chandrappa in cash in advance and took the lands on lease for one year, i.e. 1946-47. Chandrappa Yesu Dhanavade did not personally cultivate the suit lands, but he sub-leased Survey No.453 to Deft. No.6, Survey No. 459 to Deft. Nos. 4 and 5, Survey No. 460,813 and 814 to Defts. Nos. 2 and 3. Deft. No.6 took survey No. 453 as a subleasee of Chandrappa by paying Rs.5000/- to him in cash as rent in advance. Defts. Nos. 4 and 5 paid Rs.4000/- to Chandrappa and took on sublease survey No. 459. Defts. Nos. 2 and 3 took the remaining 3 lands on sub-lease for a cash rent of Rs.4000/- paid in advance to Chandrappa. Thus Chandrappa Dhanavade, by sub-letting the suit lands to defts., made a profit of Rs.1100/-.

3. After the lease for 1946-47 was over, and since Chandrappa had sub-let the lands, Chandrappa's tenancy terminated under section 5 of the Bombay Tenancy Act of 1939 as modified upto January 1947. Plff. was entitled to recover possession of those lands; so, he applied to the mamlatdar at Athni in Tenancy Application No.159 of 1947, for restoration of possession of the lands described above. To this application, Chandru and Defts. Nos. 2 to 6 were parties. The said application was heard by the Tenancy Head Karkun at Athni. In the course of the proceedings of the said application, Chandru and Defts. Nos. 2 to 6 appeared before the Tenancy Head Karkun, and gave their say. Defts. Nos. 2 to 5 stated on oath that they delivered possession of the respective lands to plff. about the Padva of 1947; that they were not in possession of the lands and they have not cut the grass as alleged by the plff. But Deft. No.6 stated that he was a tenant of the plff., he had taken survey No.453 on lease on a cash rent of Rs.1500/-; that Chandru and Defts. Nos. 2 to 6 had all gone together to plff. to take all the lands on lease and that the lease was taken in the name of Chandru out of confidence, that he was in possession of survey No. 453 and was not liable to be evicted. The Tenancy Head Karkun, on a perusal of the oral and documentary evidence, came to the conclusion that the plff. was entitled to the restoration of the lands, Thus, he decided the application on 22-9-1947, and ordered that since defts. Nos.

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2 to 5 admitted on oath that the respective lands in their possession have already been given into the plff's possession, so it was not necessary to order restoration of possession of these lands which were in the possession of Defts. Nos. 2 to 5 and so far as survey No. 453 was concerned, the Tenancy Head Karkun restored its possession to the plff. After the decision of the said application, the plff. took possession of all the lands and performed summer operations therein by home farming for the year 1947-48.

4. Defts. Nos. 2 to 6 did not prefer any appeal against the order of the Tenancy Head Karkun dated 22-9-1947 in Tenancy Application No.159 of 1947, nor did they make any application either to the Commissinner, S.D., or to the Provincial Govt. From this, it is evident that the defts. Nos. 2 to 6 did not feel themselves aggrieved by the said ~~xxxxxx~~order. But Mr. N. B. Dalavai, one of the Members of the Legislative Assembly for reasons best known to him, sent a letter to the Provincial Govt. on 29-10-1947, and another letter in the month of January 1948. By his letter dated 29-1 -1947, it seems that Mr. N. B. Dalavai, questioned the correctness of the order passed by the Tenancy Head Karkun in the Tenancy Application No.159 of 1947. The Provincial Govt. after receipt of the letter of Mr. N.B. Dalavai dated 29-10-1947, acted upon its strength and sent an order to the Collector dated 17th November 1947, directing him to see that the possession of the lands is not transferred as far as possible to the plff. until the matter was finally decided by the Provincial Govt. This interim order was passed by the Govt. solely on the letter of Mr. N. B. Dalavai dated 29-10-1947 of which no notice was given to the plff. The matter was ultimately decided by the Provincial Govt. on 23-3-1948, as could be seen from No. 7060/45 F. Revenue Department. The Provincial Govt. proceeded to decide the matter without notice to the plff., nor giving him a hearing. The plff. was informed that the Provincial Govt.

85 — 159

was pleased to set aside the order of the Tenancy Mead Karkun in T.T.A.S.R.123 and 159. Thereupon, the plff. applied to the Provincial Govt. to inform the grounds on which the Provincial Govt. arrived at such a decision. The Provincial Govt., that is Deft. No.1 refused to supply the grounds or the reasons to the plff. on which the Provincial Govt. had come to the conclu--sion against the plff. Armed with the orders passed by the - Provincial Govt., defts. Nos. 2 to 6 took the law in their -- hands and tried to usurp forcibly the possession of the lands described above. Plff. had to resist the action of Defts. Nos. 2 to 6. Ultimately the matter became serious and resulted in proceedings under Section 145 of the Criminal Procedure Code, which is still pending.

5. The order passed by deft. No.1 on 23-7-1948 is - illegal and ultra-vires. The Bombay Tenancy Act of 1939 as modified upto January 1947, prohibits the sub-lease of the lands on the part of a tenant, either protected or unprotected. Under the said Act, sub-letting on the part of a tenant or protected tenant results in the termination of the tenancy; thus, giving a right to the land-lord to recover possession of his lands fro. the tenant whose tenancy is terminated as a result of sub-letting the lands. So, the sub-letting of the lands is opposed to the provisions of the Bombay Tenancy Act. A sub-tenant claims - through tenant; if the tenancy itself terminated as a result of sub-letting, the sub-tenancy ~~xxxxxxxxxxxx~~ also comes to an end, because, a sub-tenant has no higher rights than the tenant through whom he claims. Since sub-letting is opposed to the principles of the Bombay Tenancy Act, a person who comes in - possession of the lands by virtue of a sub-lease, is a person who comes in possession unlawfully. So a sub-tenant is not a person who could be deemed to be lawfully in possession of the lands. Defts. Nos. 2 to 6 being sub-tenants, they are not per--sons who could be deemed to be lawfully in possession. If a tenant becomes a trespasser, after the termination of his tenancy, the sub.tenants who come through him, cannot be deemed to be --

87 14

to be persons holding the lands rightfully, After 1946-47, Chandru's possession of the lands became wrongful. The Defts. Nos. 2 to 6 who were claiming through Chandu, were not better than trespassers. Defts. Nos. 2 to 6 had no right to seek pro--tection under the Bombay Tenancy Act. In case of Defts. Nos. 2 to 5, their case is quite different. They have stated on oath that they had delivered possession of the respective - lands in their possession to the plff. about the Padava of 1947. The result of the order passed by deft. No.1 on 23-3-1948, is to restore possession of the lands to persons who were not - entitled to it. Defts. Nos. 2 to 5 having voluntarily surrend--ered possession of the lands to the plff., the effect of the order of the Provincial Govt. dated 23-3-1948 is to force -- possession of the lands on them. In case of Deft. No.6, he being a sub-tenant, he was not entitled to the restoration of the lands. The Provincial Govt. may take shelter under Section 28 of the Bombay Tenancy Act. By Section 28, the Provincial Govt. has a right of control and superintendence over Collect--ors and Mamlatdars in the matters of administration of the provisions of the Bombay Tenancy Act. Even though the Provin--cial Govt. possesses general powers of control and superin--tendence, the powers are to be used according to the provi--sions laid down in the Bombay Tenancy Act. Deft. No.1 has no right to pass orders reconsistent with the provisions of the said Act. The order passed by Deft. No.1 on 23-3-1948 is - opposed to the provisions of the Bombay Tenancy Act. It is illegal and ultra-vires. In passing the said order, the -- Provincial Govt. has arrogated to itself a power not warranted by the Act itself. Deft. No.1 has passed this order without notice to plff. The result of this order is that, the plff. had to lose possession of the lands described above. The order being illegal and ultra-vires does not confer any rights on Defts. Nos. 2 to 6 which they could enforce against the plff. The order passed by Deft. No.1 has not the effect of converting wrongful possession into a rightful one. Armed with this

89 +62

order, defts. 2 to 6 have wrongfully taken the possession of the suit lands and are holding them as trespassers. Since Deft.1 is responsible for the loss of the possession of the suit lands on the part of the plff., plff has to file this suit for a declaration that the order passed by deft.1, as could be seen from No.7060/45-F, Revenue Department, dated 23-3-1948, is illegal and ultra vires: and for declaration that Defts. 2 to 6 are not the tenants of the plff. and for possession of the suit lands from the defts. as owner and for costs, past mesne profits for the year 1947-48 and future mesne profits.

6. The cause of action for the suit for declaration and possession arose in the month of March 1948, and for past ~~mes~~ mesne profits for the year 1947-48 on 31-3-1948.

7. This suit is within the Special Jurisdiction of this Court.

8. The suit being one for declaration and possession and for an recovery of past mesne profits, a fixed court fee of Rs. 18-12-0 is paid on the relief by way of declaration, and Rs.775/- is paid on the relief for possession of the suit lands 7½ times of the assessment of the lands in suit i.e. Rs. 959-8-6 on the claim of past mesne profits, which is Rs. 10,000/-. So the claim for court fee consists of Rs.10959-8-6 + Rs.200/-, and that for jurisdiction is Rs.1,70,000/-. The relief by way of declaration is accompanied by a consequential relief in the form of recovery of possession. The Court fee to be paid on consequential relief exceeds the court fee to be paid on the prayer for declaration.

9. Notice of suit as required by law, has been given to Deft. No.1.

10. Plff. prays, that a decree may kindly be passed :-

(a) Declaring that the order passed by deft.1 on 23-3-194[illegible] bearing No.7060/45F is illegal and ultra-vires;

93 + 67

BILL OF COSTS.

	Plaintiff.	Deft.No.1.	Deft.No.3.	Defts.Nos.2,4,5 & & 6.
1. Stamp for plaint.	798-12-0	0- 0-0	0- 0-0	0- 0-0
2. -do- for vakalat.	0-10-0	0-10-0	0-10-0	0-10-0
3. -do- for process.	35-10-0	0- 0-0	0- 0-0	7-13-0
4. -do- for papers.	13- 2-0	6- 4-0	2- 8-0	15-10-0
5. Pleader's fee.	2280- 0-0	1140- 0-0	1140- 0-0	2280- 0-0
6. Witness Potagi.	8- 0-0	0- 0-0	0- 0-0	28- 0-0
7. Copying fee.	10- 5-0	0- 0-0	0- 0-0	51- 5-6
	3144- 7-0	1140-14-0	1143- 2-0	2383- 6-6
Costs not granted;				
Stamps on papers.	6-14-0	6- 4-0	2- 8-0	7- 8-0
Total Rupees.	3137- 9-0	1140-10-0	1140-10-0	2375-14-6

Given under my hand the seal of the Court this 30th of November 1950.

Sd/- Ranasubhe

Civil Judge, Senior Division;
Belgaum: 9-12-1950.

Sd/- C.K.Chaugule.
Karkun.

Sd/- G.P.Kulkarni
Plff's Pleader.

Deft.No.1's Pleader.

Deft.No.3's Pleader.

Sd/- Managan.
Defts. 2,4,5,and 6's Pleader.

(b) declaring that defts. 2 to 6 are not the tenants of plff;

(c) awarding possession of suit S.No.453 as owner to plff. from Deft.No.6.;

(d) awarding possession of suit ~~Mm~~ S.No. 459 as owner to plff. from Defts. Nos. 4 and 5.;

(e) awarding possession of suit S.Nos. 460,813 and 814 as owner to plff. from Defts. 2 and 3.

(f) awarding Rs.10,000/- as past mesne profits for the year 1947-48 to plff. from Defts. Nos. 1 to 6.

(g) awarding future mesne profits from Defts. 2 to 6 to plff.

(h) awarding costs of the suit to plff. from defts. 1 to 6.

(i) awarding such other relief to plff. as he is found entitled to.

This suit coming on this day for final disposal before Shri. N.V. Ranasubhe, B.A.LL.B., Civil Judge, Senior Division, Belgaum, in the presence of Srhi. G.P. Kulkarni and Shri. R.B. Hanmantgad, Pleaders for plff. and Shri. B.V. Jakati, pleader for Deft.1, Shri. S.V. Mahajan and Shri. S. V. Patil Pleaders for Defts.2,4,5 & 6 and Shri. S.P. Manoli, pleader for Deft.3, it is hereby ordered and decreed that :-

1. It is hereby declared that the order passed by the Govt. on 23-3-1948 is illegal and ultra-vires.
2. Plff. do recover possession of S.No.453 from Deft. No.6, of S.No.460, 813 and 814 from defts. Nos. 2 and 3.
3. Plff. do recover Rs.8900/- as past mesne profits for 1947-48 from dedts. 2 to 6.
4. Plff. do recover costs of the suit from defts. 2,4 to 6. The defts. 1,2,4 to 6 do bear their costs.
5. An enquiry into future mesne profits be held under O. 20 R.12 (c) of C.P.C. against defts. 2 to 6 in connection with respective lands held by each or more of them.

BILL OF COSTS.

P.T.O..

Copy of letter No.J.17 of 1951 dated 19-1-51

from the District Government Pleader addressed to the - Collector of Belgaum.

Subject:- Civil Suit No.103 of 1948.
Shri V.S.Patwardhan.
Vs.
Province of Bombay.

" With reference to the subject noted above, I have the honour to send herewith the certified copies of judgement and decree in Reg. O.S.No.103 of 1948 for further action in the matter" .

No.L.A.W. 741.

Belgaum, 30th Jan 1951.

Copy, with uncertified and certified copies of the Decree and Judgement passed by the Civil Judge, S.D. Belgaum in Civil suit No.103 of 1948 forwarded w.cs. to the Remembrancer of Legal Affairs, Bombay.

2. For the reasons stated by the Dist.Govt. Pleader, Belgaum, in his letter No.CS-103 of 1948 dated 23-12-1950 (copy enclosed) an appeal against the order passed by the Lower Court is recommended.

For Collector of Belgaum.

K/30/1

Legal dept.

Please see the endorsement overleaf from the Collector of Belgaum. Sanction may be accorded to the institution of an appeal in the High Court Bombay as recommended by the A.G.P. and the Collector

W.
2/12

A. Sols.

The Plff's Suit-3 for setting aside the orders passed by the Govt. of Bombay which in their turn had set aside the order passed under the Tenancy Act by the Tenancy Appal Karkun at Athani. The Govt. had contended that its order was intra vires, & that the Civil Court had no jurisdiction to question the same. These contentions were negatived by the C.J. (S.D.) Belgaum who ~~decreed~~ dismissed the Suit on 30-11-50 vide copy of the judgment at Slip N. In my opinion an appeal should be filed in this matter. The ~~Govt~~ trial Court's judgment can easily be challenged on the detailed grounds mentioned in the D.G.P.'s letter at Slip Y & on the lines of the brief on which the Govt. of the Suit was sanctioned. (vide Slip A).

5-2.

Sol (Ins.) I agree with the opinion of A. D.G.P. An appeal should be filed & the

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Suits;
Belgaum.

For a declaration that the orde Government in Government letter, Revenue Department, No.7060/45-F, dated 23rd March 1948, stating as the Tenancy Aval Karkun's Order i Tenancy Case No. B.T.A.S.R. 159, i illegal and ultra vires, that defe dants Nos. 2 to 6 are not the tena of the plaintiff in respect of the suit lands and for possession of t suit lands with past and future mesne profits.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 3122.
Bombay Castle, February 1951.

Read Government Resolution, Legal Department, No. 9348, dated the 19th August 1949.

Letter from the District Government Pleader, Belgaum No. J. 413, dated the 5th Decemb 1951, stating that the suit noted in the margin was decided by the Civil Judge (Senior Division), Belgaum on 30th November 1950, when the following order was passed :-

In the Court of the Civil Judge (Senior Division) Belgaum.
Civil Suit No. 103 of 1948.

Vinayakrao Shripadrao Patwardhan... Plaintiff.
vs.
The Province of Bombay and others.. Defendants.

" 1) It is hereby declared that the order passed by the Government on 23-3-1948 is illegal and ultra vires.
2) Plaintiff do recover possession of S. No. 453 from Defendant No. 6, of S. No. 459 from Defendants 4 and 5, of S. No. 460, ~~&~~ 813 and 814 from Defendants 2 and 3.
3) Plaintiff do recover Rs. 8900/- as past profits for 1947-48 from Defendants 2 to 6.
4) Plaintiff do recover costs of the suit from Defendants 2,4 to 6. The Defendants 1,2,4 to 6 do ~~bear~~ their costs.
5) An anquiry into future mense profits be held under O. 20 Rs. 12(c). of ~~Criminal~~ Procedure Code against Defendants 2 to 6 in connection with respective lands held by each or more of them."

Endorsement from the District Government Pleader, Belgaum No. O.S. 103, dated the 23rd December 1950 recommending the institution of an appeal.

Endorsement from the Collector of Belgaum No. L.A.W.741, dated the 30th January 1951 forwarding the above with his concurrence.

RESOLUTION :- Sanction is accorded to the institution of an appeal in the High Court, Bombay against the decision of the Civil Judge (Senior Division), Belgaum dated the 30th November 195 on the lines of the brief accompanying Government Resolution, Legal Department, No. 9348, dated the 19th August 1949.

By order of the Governor of Bombay,

E. P. Bhamgara,

Additional Assistant Secretary to Government.

To
The Revenue Department,
The Collector of Belgaum,
The District Government Pleader, Belga

BM.
16.2.

19 217

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

(DIST. BELGAUM.

FIRST APPEAL NO. 269 OF 1951.
St. No. 1974/51.

1. Shiddappa Balappa Ghanigar, Lingayat, Agriculturist, age 30, of Ainapur.
2. Chanamallappa Lakkappa Ghaniger, Lingayat Agriculturist, age 60, of do.
3. Jakkappa Shiddappa Karchi, Lingayat, Agriculturist, age 60, of do.
4. Mallappa Shiddappa Karchi, age 55, rest do.

APPELLANTS. (ori. Defts. Nos.2,4,5 & 6).

Versus.

1. Vinayakrao Shripatrao Patwardhan, Bhahmin, Agriculturist, age 45, of Miraj.
2. The Province of Bombay.
3. Hanamant Kushnappa Khot, Maratha, Agriculturist, age 30, of do.

RESPONDENTS. (Ori.Plaintiff & Defts. 1 & 3).

Claim Rs. for Court fees.

Rs.1,70,000/- for Advocate's fees.

The Appellants abovenamed feeling aggrieved by the judgment and decree dated 30-11-1950 in Spl. Civil Suit No. 103 of 1948 in the Court of the Civil Judge, Senior Division, at Belgaum beg to file this First Appeal to this Hon'ble High Court and set forth the following, among others, as the grounds of appeal, namely:-

1. The decree and judgment are contrary to law and evidence in the case.

2. The lower Court failed to consider the effect of the order of the Tenancy Aval Karkun which was ultra - vires.

3. The lower Court ought to have held that plaintiff had no cause of action as he based the same on the invalid order of the Tenancy Aval Karkun.

4. Proper issue was not raised on this point.

5. It should have been held that the Civil Court had no jurisdiction to try the plaintiffs suit in view of the Bombay Tenancy Act.

6. The lower Court should have held that defendants 2 to 6 were protected tenants not liable to be evicted under the process of Civil Court.

7. The lower Court had no jurisdiction to declare that the order of the Bombay Government dated 23-3-1948 was illegal and ultra vires.

8. The lower Court erred in holding that the said order was opposed to principle of natural justice.

9. The lower Court failed to see that the law did not enjoin on the Government to hear the plaintiff or give him notice before making the said order.

10. The relevant provisions of the Bombay Tenancy Act were misconstrued.

11. The finding on issue No.3 is contrary to law and the facts of the case.

12. The lower Court was not justified in awarding mesne profits to plaintiff from defendants 2 to 6.

13. In any event the lower Court should not have awarded Rs.8,900/- as past mesne profits.

14. The plaintiff's suit ought to have been dismissed with costs and compensation.

15. That the suit was bad for multifariousness and misjoinder of causes of action.

16. That the Chandru was a necessary party to the suit and the suit is not mainteinable.

17. That the plaintiff has no cause of actiona dnd the as framed is bad in law.

18. It was an error to hold that Chandru was the tenant and the appellants were the sub-tenants.

19. That no notice of termination of tenancy as required by law was given gither to the defendants 2 to 6 or to Chandru and the suit therefore is not maintainable.

103 27

20. That the plaintiff was aware of the Government inquiry and proceedings against the order of the T.A.K.

21. That Shri Dalvai was B.A., LL.B., Pleader and acted for the appellants on their behalf as pleader.

22. That the Bombay Tenancy Act 1948 applied to the facts of this case, as the act came in force when the suit was filed.

23. That the appellants were at any rate, sub-tenants with the knowledge and consent of the plaintiff.

24. That the appellants were lawfully cultivating the land under the provisions of the Bombay Tenancy Act 1939 as amended upto 1948 and as such were entitled to the protection under the said Act.

25. That the plaintiff having himself elected and sub-mitted to go before the Revenue Authorities, he was estopped and barred from approaching the Civil Court and question the authority of the Government and the order passed by them.

26. That the Civil Court trying the suit below had no juris-diction to order possession to be delivered to the plaintiff.

27. The order as to costs is wrong.

28. That the appellants and their evidence should have been believed.

29. That plaintiff and his evidence should not have been believed.

30. Proper inferences have not been drawn.

31. Evidence has been misappreciated.

Bombay.
21st February 1951.

Sd. H. F. M. Reddi,
Advocate for the Appellants.

G. P. Baroda--7-49-1,000
G. R., Jt. D., No. 4398 dated 3-7-16

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[Spl. H. C. A. S. Civil 20 e

IN ~~HIS MAJESTY'S~~ HIGH COURT OF JUDICATURE,
APPELLATE SIDE, BOMBAY

APPEAL No. 269 OF 1951 FROM ORIGINAL DECREE
(with F.A.-270/51.)

Shiddappa Balappa Ghanger & others } Appellant (Ori. Deft. Nos. 2, 4, 5 & 6.

versus

The Province of Bombay. } Respondent (Ori. Pl. No.)

Claim—Rupees 1,70,000/- for Advocate's fees.

No. 417 OF 1951.

From

THE DEPUTY REGISTRAR
High Court, Appellate Side, Bombay;

To The Secretary to the Government of Bombay.
Legal Department, Bombay.

Bombay, 27th April 1951

Sir,

The Appellant abovenamed having presented an appeal from the decision of the S.D.; Civil Judge of Belgaum in Spl. Suit No. 103 of 1948, and the same having been registered in this Court, and this Court having on 23rd February 1951, ordered notice to issue, I have the honour to inform you that the hearing of the said appeal will take place on the 18th day of June 1951, or on any subsequent day which to this Court may seem convenient; and that if no appearance is made on your behalf either in person or by an ~~pleader~~ Advocate of this Court or agent duly authorized and instructed, it will be heard and determined in your absence.

To be served on the Government Pleader, High Court, Bombay.

Yours faithfully,

sd/- R. L. Mahale

for Deputy Registrar.

D E C R E E.

107/207

In the Court of Civil Judge, S.Dn,
at Belgaum.

Ex. 83.

Reg. O.S.No. 14 of 1948

Shri. K.D.Hajeri — 1. Laxman Ramappa Madamgeri, Caste Kusawar, age 35, Occ. Sanadi service and agricultrist of Ajankatti, Taluka Gokak, — Plff.

Vs.

Shri.B.V.Jakati — 1. The Province of Bombay, through the Collector of Belgaum

Shri G.V.Katti — 2. Sanlaxmya Basalingappa Jakkannaver, caste - Kusawar, age 40, occ. agri. of Ajjankatti — Defts.

Exparte — 3. Bhimappa Sakareppa Sunadhol, age 40 caste etc.-do-

Exparte. — 4. Kareppa Bhimmpa Sunadholi, age 35, caste etc -Do-

Claim Rs. 18-12-0 for court fees.
" 6000/- for jurisdiction.

The plff sues:-

.....0.....
.....0.....

BILL OF COSTS.
(Transalated into English)

	Plff	Deft 1	Deft 2:
	Rs. As. Ps.	Rs. As. Ps.	Rs. As. Ps.
1. Stamp for plaint	18- 12- 0	0 - 0 - 0	0 - 0 - 0
2. -do- for vakalat	0- 10- 0	0- 10 - 0	0- 10 - 0
3. -do- for appls.	4 - 6- 0	7- 8 - 0	1- 14 - 0
4. Pleader's fees	210- 0- 0	210- 0 - Ø	210- 0 - 0
5. Stamp for power	22 - 8 - 0	0 - 0 - 0	0- 0 - 0
6. Copying fees.	0 -11 - 6	0 - 0 - 0	0 - 0 - 0
Total Rs.	256 - 15- 6	218 - 2 - 0	212 - 8 - 0
Costs not granted on applications.	4 - 6 - 0	7 - 8 - 0	1 -14 - 0
Total	252 - 9 - 6	210 -10 -0	210 - 10 - 0

Given under my hand and the seal of the court this day 30th day of March 1950.

Sd. C.K.Chougle.
Clerk.

sd. K.D.Hajeri,Pl
Pleader for plff.

sd. G.V.Katti,Pl.
Pleader for Deft 2.

Sd. N.V.Ranasubhe.
Civil Judge, Senior Division,
Belgaum.
13-4-1950.

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This is to certify that Rs. 1-14-0 have been spent by me on account of stamps for three more applications than those shown in the bill of costs, in Regular Civil Suit No. 14 of 1948 on the file of the Civil Judge, Sr.Dn., Belgaum, (Laxman Ramappa Madamgeri of Ajjankatti Taluka Gokak Vs. The Province of Bombay and 3 others.

Belgaum,
19-1-1951.

Dist. Govt. Pleader,
B E L G A U M.

Subject for information
File in Bel 1/50

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A Soh

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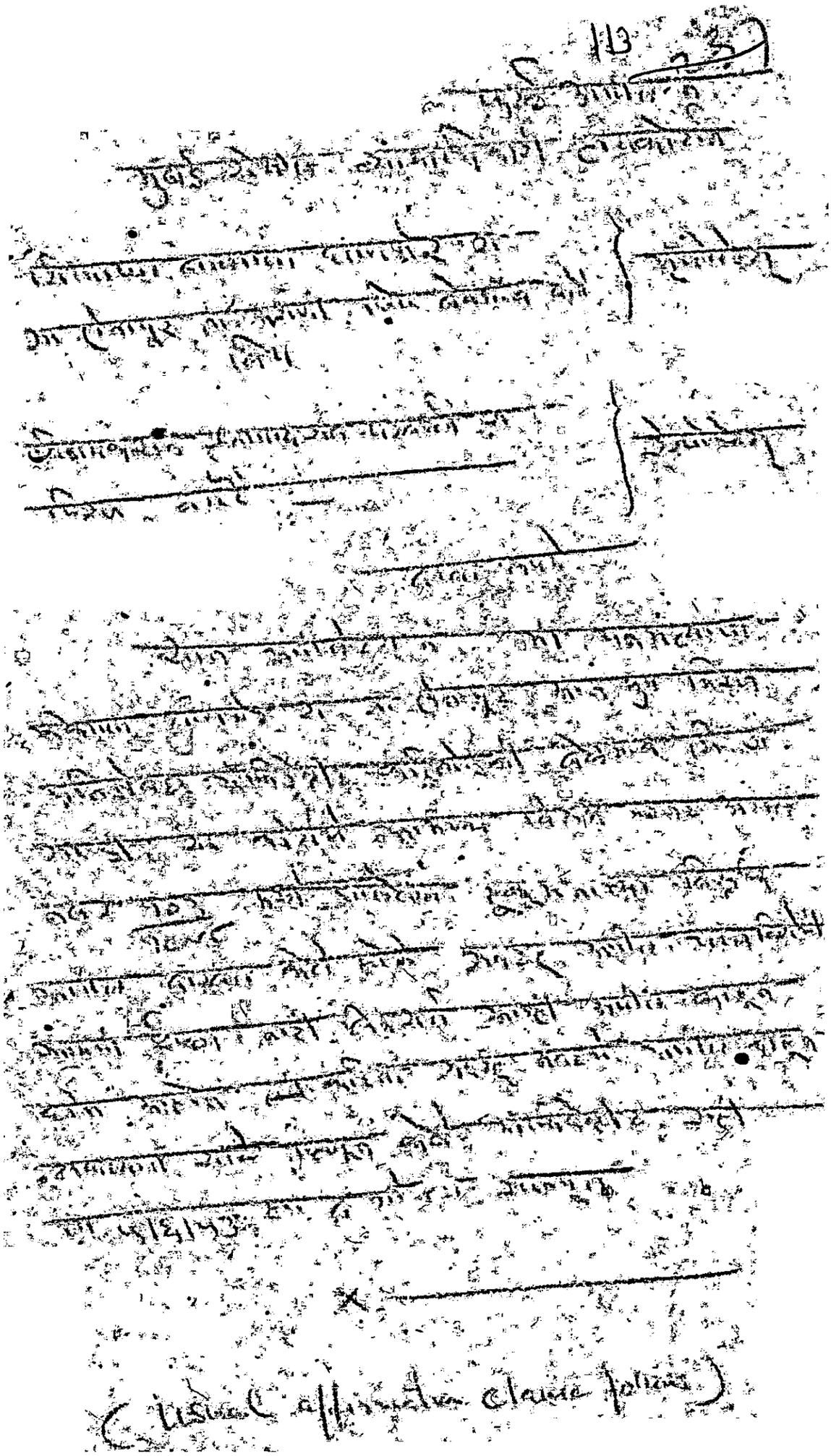
S. Belgium 1/50

7.4.50

(Illegible affirmation about [illegible])



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Solr. (M.L.)

1235-53

First Appeal No.270 of 1951.

In Civil Suit No.103 of 1948
of Belgaum.

Survey Nos. 453, 459, 460, 813 and 814 of the village Ainapur, Taluka Athani belonged to Vinayakrao Patwardhan. He had let out these lands in 1946-47 to one Chandru for a period of one year. The said Chandru had in turn sublet the lands to defendants 2 to 6. Chandru informed the landlord at the end of the year that he had given up possession. But the sub-tenants, defendants 2 to 6, refused to give actual possession to Vinayakrao Patwardhan. Shri Patwardhan therefore filed an application before the Tenancy Avalkarkun for possession alleging that his tenant Chandru had illegally sublet the lands to defendants 2 to 6. The Tenancy Avalkarkun passed an order for possession in favour of Vinayakrao Patwardhan. Defendants 2 to 6 did not file any appeal to the Collector, but defendants 4,5 and 6 approached the Government for relief and the Government, purporting to exercise their revisional powers set aside the order of the Avalkarkun and dismissed Vinayakrao Patwardhan's application for possession.

Vinayakrao Patwardhan then filed the present suit for a declaration that the order passed by the Government was illegal, ultra vires, and ineffective. He mainly contended that the Government had passed the order without giving him an opportunity to be heard. No reasons were given for setting aside the order of the Tenancy Avalkarkun.

The...:

The plaintiff claimed a declaration of the illegality of the order and also possession from defendants 2 to 6. The State of Bombay was made defendant No.1 in the suit.

The trial Court held that the order passed by the Government setting aside the order of the Tenancy Avalkarkun was illegal and ultra vires and against the principles of natural justice. The reasons for that view would appear from the judgment at page 133 of the file.

The Government of Bombay then filed first appeal No.270 of 1951 and defendants 2 to 6 filed first appeal No.269 of 1951 in the High Court.

It seems that defendants 2 to 6 have now settled their dispute with the plaintiff Vinayakrac Patwardhan. Defendants 2 to 6 had,therefore, decided to withdraw appeal No.269 of 1951 filed by them.

The Collector of Belgaum has expressed the view that as the tenants and the landlord have settled their dispute, no useful purpose will be served by prosecuting the appeal filed by the Government, viz. appeal No.270 of 1951. The Government Pleader,High Court, also suggests that in view of the settlement between the landlord and the tenants the Government may not prosecute the appeal.

The main point involved in the appeal filed by Government is of academic interest and it relates to the powers of the Government under the former Tenancy Act to issue orders in revision. Another point involved in the appeal would be whether the Government could exercise their revisional powers and set aside the order of the Tenancy Avalkarkun without giving an opportunity to the other party to be heard. These points are

only...

only, however, of academic interest. Even if the Government succeeds in the appeal the tenants will not get any relief as they have already surrendered possession to the landlord.

Under these circumstances Government may accept the suggestion of the Collector of Belgaum, supported by the Government Pleader, High Court, and the District Government Pleader, Belgaum, that the appeal filed by the Government viz, appeal No.270, of 1951 may not be prosecuted. But this attitude should be taken only if the respondents in the appeal agree not to claim costs of the appeal from the Government.

13-7-54

Jt. Secy. 13/7.

REVENUE DEPARTMENT, SECRETARIAT, BOMBAY. 14 JUL 1954

x Secy. R.D. 13/7

No. x 16929-E
9-14-7-54.

3320.

127 265

Typed by Mr.S.D.Paradkar.

Examined by Mr. P.J. Vyas

Read by Mr. K.I. Afsarwala

Rs.As.Ps.Fls.2

Copying and comparing charges: 0-12- 0

Paper charges: 0- 0- 3

Total Rs: 0-12- 3

Annas twelve and pies three only.

Superintendent, Decree Department.
22-1-1955.

Copy applied for on 29-12-54
Copy ready on 24 JAN 1955
Copy delivered on 4-3-55
Fee paid by I.P.O. Rs. Ps. on Bond. Paper
Assistant Superintendent. 4/3

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Order passed by the High Court in the case of:

The State of Bombay.
(Original Defendant No.1.) ------ Appellant.

versus

1.Vinayakrao Shripatrao Patwardhan; 2 Shiddappa Balappa Ghaniger; 3 Hanmant Kushappa Khot; 4 Chanmallapa Lakappa Ghaniger; 5 Jakkappa Shiddappa Karchi; 6 Mallappa Shiddappa Karachi;
(Respondent No.1 Original Plaintiff, Respondents Nos.2 to 6 Original Defendants Nos.2 to 6.)
---- Respondents.

HIGH COURT BOMBAY ORIGINAL SIDE FILED 29 DEC 1954

Being First Appeal No.270 of 1951 with First Appeal No.269 of 1951.
The Government Pleader for the State of Bombay.-Appellant.
Shri V.N.Lokur, Advocate for Opponent No.1.
Shri H.F.M.Reddi, Advocate for Respondents Nos.2, 2,4 to 6.

Coram:-Gajendragadkar and Shah, JJ.

Appeal allowed to be withdrawn.

No order as to costs.

19th November 1954.

Sd/-V.R:Gadkari.
Deputy Registrar.

True copy
for Deputy Registrar.
The 22nd day of January 1955.

3320.

129-267

Typed by Mr.S.D.Paradkar.

Examined by Mr. B.J.[illegible] Copying and comparing charges: Rs.As.Ps.Fls.13. 4-14- 0

Read by Mr. R. J. Africawala. Paper charges: 0- 0- 9

Total Rs: 4-14- 9

Rupees four,annas fourteen and pies nine only.

Copy applied for on 29-12-54 Superintendent, Decree Department.
Copy ready on 24 JAN 1955 22-1-1955.
Copy delivered on 4-3-55
Sent by V. P. P. on
Rs. As. Ps.
Assistant Superintendent. 4/3

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Friday the 19th day of November 1954.

Appeal No.270 of 1951 From Original Decree.

(With First Appeal No.269 of 1951.)

The State of Bombay.

(Original Defendant No.1.) ------ Appellant.

versus

1.Vinayakrao Shripatrao Patwardhan; 2 Shiddappa Balappa Ghaniger; 3 Hanmant Kushappa Khot; 4 Chanmallappa Lakappa Ghanjger; 5 Jakkappa Shiddappa Karachi; 6 Mallappa Shidappa Karchi;

(Respondent No.1 Original Plaintiff;Respondents Nos.2 to 6-Original Defendants Nos.2 to 6.)--Respondents

Claim-Rs.200-0-0 for Court fees and Jurisdiction

The Plaintiff sued for a declaration that the order passed by Defendant No.1 on 23rd March 1948 is illegal and ultra vires,for a declaration that Defendants Nos.2 to 6 are not the tenants of the Plaintiff,for possession of suit lands from Defendants,for recovery of Rs.10,000 as past mesne profits for the years 1947-48 from Defendants Nos.1 to 6 and for future mesne profits and costs of the suit.

The Original Special Suit No.103 of 1948 was decided by the Civil Judge (Senior Division) of Belgaum who

decreed the suit,as detailed in the judgment with costs.

An appeal has been admitted in the High Court from the decision of the lower Court.Notice was ordered to issue by the Hcnourable Mr.Justice Gajendragadkar on the 4th day of April 1951.

The grounds of objection to the decision appealed against are:

1.That the decision of the lower Court is contrary to law and against the weight ofevidence in the case.

2.That the learned Judge erred in holding that the order of the Bombay Government passed on 23rd March 1948 was illegal and ultra vires.

3.That the learned Judge erred in law in holding that the same could be set aside.

4.That the lower Court ought to have held that the order of the Government was intra vires.

5.That it ought to have been held that the lower Court had no jurisdiction to call in question the order of the Government.

6.That the learned Judge has not correctly appreciated the true scope and effect of Section 24(1)A of the Bombay Tenancy Act and section 89 of the Bombay Tenancy and Agricultural lands Act.

7.That the learned Judge erred in law in holding that the jurisdiction of the Civil Court was not ousted.

8.That the view of the learned Judge that Section 28 of the Bombay Tenancy Act does not oust the jurisdiction of the Court to adjudicate upon the legality of the order passed by the Government is erroneous.

9.That the lower Court erred in law in holding that it had jurisdiction to entertain and try the questions raised in the suit.

10.That it ought to have been held that the Mamlatdar had no right to determine the right of tenancy of the other Defendants being Defendants Nos.2 to 6.

11.That the lower Court erred in not appreciating that the action of the Government and the order of the Government was justified under thepowers held by them under Section 28 of the Tenancy Act and 211 of the Land Revenue Code.

12.That the learned Judge held that the Government could not exercise these powers except upon motion by the party is clearly erroneous.

137—262

13.That the learned Judge erred in law in holding that it was a fundamental mistake committed by the Government in acting on the communication of a stranger.

14.That the lower Court erred in not appreciating that if the Government could act suo motu,then there was nothing to prevent the Government from acting on the communication of a third party.

15.That the learned Judge erred in saying that Government did not call for case papers.

16.That the view of the lower Court that the executive cannot revise order without giving a notice to the other side or hearing them is clearly erroneous.

17.That the learned Judge erred in holding that the order of the Government was bad because it did not assign any reasons for upsetting the order of the Mamlatdar.

18.That the learned Judge erred in not appreciating the Section 28 of the Bombay Tenancy Act empowers the Government to revise any order passed by the subordinate revenue officer.The Government can do it either on its own motion or on the application of any aggrieved party.That the view of the lower Court that in this case the order of the Government revising the order of the Tenancy Aval Karkun is erroneous because it was on the representation of Shri Dalvai is erroneous.It erred in not appreciating that the Government could revise orders suo motu.

19.That the learned Judge is under some serious misapprehension when he says that papers were not called for.That it is clear from the correspondence that the reports from the subordinate officers were submitted along with the papers from the case.

20.That the learned Judge's view that notice ought to have issued to plaintiff before deciding the case is erroneous. The learned Judge failed to appreciate that neither Section 211 of the Bombay Land Revenue Code contemplate the giving of a notice.That they do not make the giving of a notice obligatory before taking any decision.

21.That the view of the learned Judge that Government was

bound to assign reasons is also erroneous.

22. That the learned Judge failed to appreciate that neither Section 28 of the Tenancy Act nor section 211 of the Land Revenue Code require the ~~gigin~~ giving of reasons for supporting an order.

23.That the learned Judge erred in not appreciating that the order of the Mamlatdar was clearly illegal and hence the Government was right in interfering with the same in revision.

24.That the decision is even ~~x~~ otherwise erroneous.

That the Appellant craves leave to add,to alter,or to cancel the grounds after the record is received.

Note:That the Respondents being Original Defendants Nos.2,4,5 and 6 have filed an appeal being First Appeal Stamp No. ~~1974~~ 4774 of 1951. That in that matter they will pay Court fee stamp on the amount decreed.The Government is interested inhaving delcared that the order passed by Government on 23rd March 1948 is legal,hence they put the claim for Court fee at Rs.200.

Coram:-Gajendragadkar,and Shah,JJ.

Appeal allowed to be withdrawn.

No order as to costs.

19th November 1954. Sd/-V.R.Gadkari.

Deputy Registrar.

Bill of costs in the High Court.

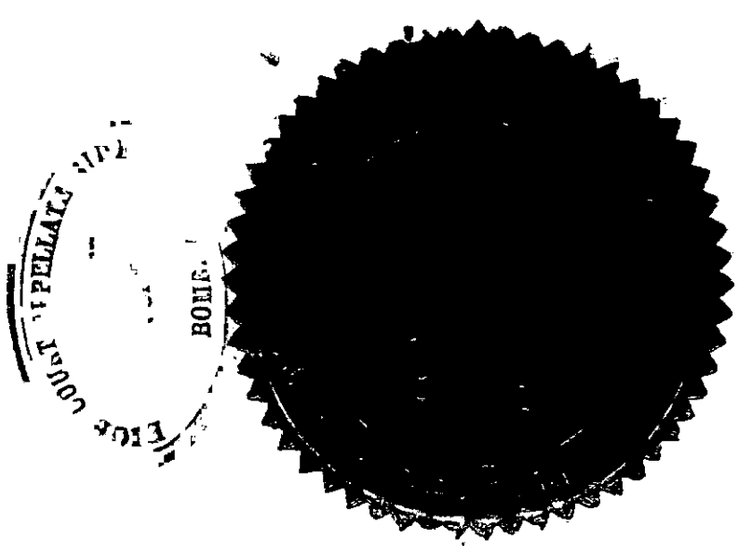
By the Appellant	Rs.As.Ps.
Stamps for Memorandum of Appeal	18-12- 0
Stamps for copies of Decrees and Judgments	1-14- 0
Stamps for Vakalatnama (G.P.appears.)	0- 0- 0
Bhatta for Process	7- 8- 0
Sectioner's Fee	40- 8- 0
Advocate's Fee	45- 0- 0
Sur charge	11- 4- 0
Printing charges	15- 0- 0
Copying charges for preparing paper-books	15- 0- 0
Translation Fee	9- 8- 0
Copying Fee under Rule 125 of the High Court, Appellate Side Rules 1950	13- 8- 0
Total Rs:	177-14- 0

133-271.

By the Respondent No.1.	Rs.As.Ps.
Stamps for Vakalatnama	2- 8- 0
Advocate's Fee	45- 0- 0
Sur charge	11- 4- 0
Total Rs:	58-12- 0

By Respondent 2,4 to 6.	Rs.As.Ps.
Stamps for Vakalatnama	2- 8- 0
Advocate's Fee	45- 0- 0
Sur charge	11- 4- 0
Total Rs:	58-12- 0

(Seal)



XSd/-V.R.Gadkari.

Deputy Registrar.

The 19th day of November 1954.

True copy

for Deputy Registrar

The 22nd day of January 1955.

No.3313. Rs.As.Ps.(Fs.2) Typed by Mr.P.J.Vyas.

Copying and comparing charges. 0-12- 0 Examined by Mr.G.S.Desai.
Paper charges. 0 -0 -3 Read by Mr.S.D.Paradkar.

Total Rs. 0-12- 3

Total Annas twelve and pies three only.

Superintendent, O.D.,
28-1-1955.

Copy applied for on 29-12-54
Copy ready on 29 JAN 1955
Copy delivered on 15-3-55
Sent by V.P.P. on
Assistant Superintendent 15/3

In the High Court of Judicature at Bombay.

Order passed by the High Court in thecase of:-

1. Shiddappa Balappa Ghanigar.
2. Chanamallappa Lakkapa Ghanigar.
3. Jakkappa Shiddappa Karchi.
4. Mallappa Shiddappa Karchi.

(Original Defendants Nos.2,4,6 and 6) ... Appellants.

Versus.

1. Vinayakrao Shripatrao Patwardhan.
2. The Province of Bombay.
3. Hanamant Kushanappa Khot.

(Original Plaintiff and Defendants Nos.1 and 3)..Respondents

Being Appeal No.269 of 1951 from Original Decree (with First appeal No.270 of 1951).

Mr. H.F.M. Reddi, Advocate for the appellants.

Mr.V.N.Lokur, Advocate for Opponent No.1.

The Government Pleader for Opponent No.2.

Coram:- Gajendragadkar & Shah, JJ.

Appeal allowed to be withdrawn.

No order as to costs.

19th November 1954. Sd/. V.R.Gadkari.
Deputy Registrar.

True Copy.

for Deputy Registrar.

The 28th day of January 1955.

No.3113.

Rs.As.Ps.(Fs.11)

Typed by Mr.P.J.Vyas.

Copying and comparing charges. 4 -2 -0
Paper charges. 0 -0 -6
Total Rs. 4 -2 -6

Examined by Mr.G.S.Desai.
Read by Mr.S.D.Paradkar.

Rupees four, annas two and pies six only.

Superintendent,D.D.,
28 -1-1955.

Copy applied for on 29-12-54
Copy ready on 29 JAN 1955
Copy delivered on , 15-2-55
Sent by V.P.P. Regd. Post on
Assistant Superintendent.

HIGH COURT APPEL...

In the High Court of Judicature at Bombay.

Friddy the 19th day of November 1954.

Appeal No.269 of 1951 from Original Decree.

(With F.A.No.270 of 1951).

1. Shiddappa Balappa Ghanigar.
2. Chanamallappa Lakkapa Ghanigar.
3. Jakkappa Shiddappa Karchi.
4. Mallappa Shiddappa Karchi.

(Original Defendants Nos.2,4,5 and 6) ... Appellants.

Versus.

1. Vinayakrao Shripatrao Patwardhan.
2. The Province of Bombay.
3. Hanmant Kushanappa Khot.

(Original Plaintiff and Defendants Nos.1 and 3)..Respondents.

Claim:- Rs.7,982/- plus Rs.200 = Rs.8,182/- for court fees.
Rs.1,70,000/- for Advocate's fees.

The plaintiff sued for a declaration that the order -- passed by defendant No.1 on 23rd March 1948 is illegal, and ultra vires, for a declaration that defendants Nos. 2 to 6 are not the tenants of the plaintiff, for possession of suit lands from defendants, for recovery of Rs.10,000/-, as past mesne profits for the year 1947-48 from defendants Nos.1 to 6 and future mesne profits and costs of the suit.

The Original Special Suit No.103 of 1948 was decided by the Civil Judge (Senior Division) of Belgaum who decreed the suit as detailed in the judgments with costs.

An appeal has been admitted in the High Court from the decision of the lower court. Notice was ordered to issue by the Honourable Mr. Justice Gajendragadkar on the 23rd day of February 1951.

The grounds of objection to thedecision appealed against are:-

1. The decree and judgment are contrary to law and evidence in the case.

2. The lower court failed to consider theeffect of the order of the Tenancy Aval Karkun which was ultra vires.

3. The lower court ought to have held that plaintiff had no cause of action as he based the same on the invalid order of the Tenancy Aval Karkun.

4. Proper issue was not raised on this point.

5. It should have been held that the Civil Court had no jurisdiction to try the plaintiff's suit in view of the Bombay Tenancy Act.

6. The lower court should have held that defendants Nos. 2 to 6 were protected tenants not liable to be evicted under the process of Civil Court.

7. The lower court had no jurisdiction to declare that the order of the Bombay Government dated 23rd March 1948 was illegal and ultra vires.

8. The lower court erred in holding that the said order was opposed to principle of natural justice.

9. The lower court failed to see that the law did not enjoin on the Government to hear the plaintiff or give him notice before making the said order.

10. The relevant provisions of the Bombay Tenancy Act were misconstrued.

11. The finding on issue No.3 is contrary to law and the facts of the case.

12. The lower court was not justified in awarding mesne profits to plaintiff from defendants Nos.2 to 6.

13. In anyevent the lower court should not have awarded Rs. 8,900/- as past mesne ~~pfs~~ profits.

14. The plaintiff's suit ought to have been dismissed with costs and compensation.

15. That the suit was bad for multifariousness and misjoinder of causes of action.

16. That the Chandru was a necessary party to the suit and the suit is not maintainable.

17. That the plaintiff has no cause of action and the suit as framed is bad in law.

18. It was an error to hold that Chandru was the tenant and the appellants were the sub-tenants.

19. That no notice of termination of tenancy as required by law was given either to thedefendants Nos.2 to 6 or to Chandru and the suit therefore is not maintainable.

20. That the plaintiff was aware of the Government inquiry and proceedings against the order of the Tenancy Aval Karkun.

21. That Shri.Dalvai was B.A.,LL.B., Pleader andacted for the appellants on their behalf as pleader.

22. That the Bombay Tenancy Act 1948 applied to the facts of this case, as the act came in force when the suit was filed.

23. That the appellants were at any rate, sub-tenants with the knowledge and consent of the plaintiff.

24. That the appellants were lawfully cultivating the land under the provisions of the Bombay Tenancy Act 1939 as amended up to 1948 and as such were entitled to the protection under the said Act.

25. That the plaintiff having himself elected and submitted to go before the Revenue Authorities, he was estopped and -- barred from approaching the Civil Court and question the authority of the Government and the order passed by them.

26. That the civil court trying the suit below had no -- jurisdiction to order possession to be delivered to the plff.

27. The order as to costs is wrong.

28. That the appellants and their evidence should have been believed.

29. The plaintiff and his evidence should not have been believed.

30. Proper inferences have not been drawn.

31. Evidence has been misappreciated.

N.B.The claim is made as under:-

	Rs.As.Ps.
(1) For possession of the land 7½ times of the usual.	959- 0 -0
(2) For mesne profits awarded Rs.8900/-out of them we admit Rs.1,877/-as reasonable rent.	7023 -0 -0
Total Rs.	7,982.-0-0 for court fees.

Coram:- Gajendragadkar and Shah, JJ.

Appeal allowed to be withdrawn.

No order as to costs.

19th November 1954. Sd/. V.R.Gadkari.

Deputy Registrar.

Bill of costs in the High Court.

By the appellants.	Rs.As.Ps.
Stamps for Memorandum of appeal.	587 -8 -0
Stamps for copies of Decree and Judgment.	1-14- 0
Stamps for vakalatnama.	2 -8 -0
Bhatta for process.	12 -8 -0
Sectioner's fee.	40 -8 -0
Advocate's fee(One fourth)	285 -0 -0
Surcharge.	71 -4 -0
Printing charge.	11 -0 -0
Stamps for affidavits.	1 -4 -0
Total Rs.	1013 -6 -0

By Respondent No.1.

Stamps for vakalatnama.	2 -8 -0
Advocate(s fee(One fourth)	285 -0 -0
Surcharge.	71 -4 -0
Total Rs.	358-12- 0

By Respondent No.2.

Stamps for vakalatnama(G.P.Appears)	0 -0 -0
Advocate's fee(One fourth)	285 -0 -0
Surcharge.	71 -4 -0
Total Rs.	356 -4 -0

(Seal)

Sd/. V.R.Gadkari.
Deputy Registrar.
The 19th day of November 1954.

True Copy.

for Deputy Registrar.

The 28th day of January 1955.

S. Belgaum 1/50.
15/4/55